CLERK'S COPY.

Vol. I

Supreme Court of the United States

OCTOBER TERM, 1942

No. 11

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

No. 12

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vs.

UNION TRUST CO. AND ILLINOIS STATE TRUST CO., AS TRUSTEES, ET AL.

No. 13

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

ISRAEL A. ABRAMS, ET AL.

No. 14

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

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No. 22

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v.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, ET AL.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No.

IN THE MATTER OF

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Debtor.

GROUP OF INSTITUTIONAL INVESTORS, AND MUTUAL SAVINGS BANK GROUP,

Petitioners,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, ET AL.,

Respondents.

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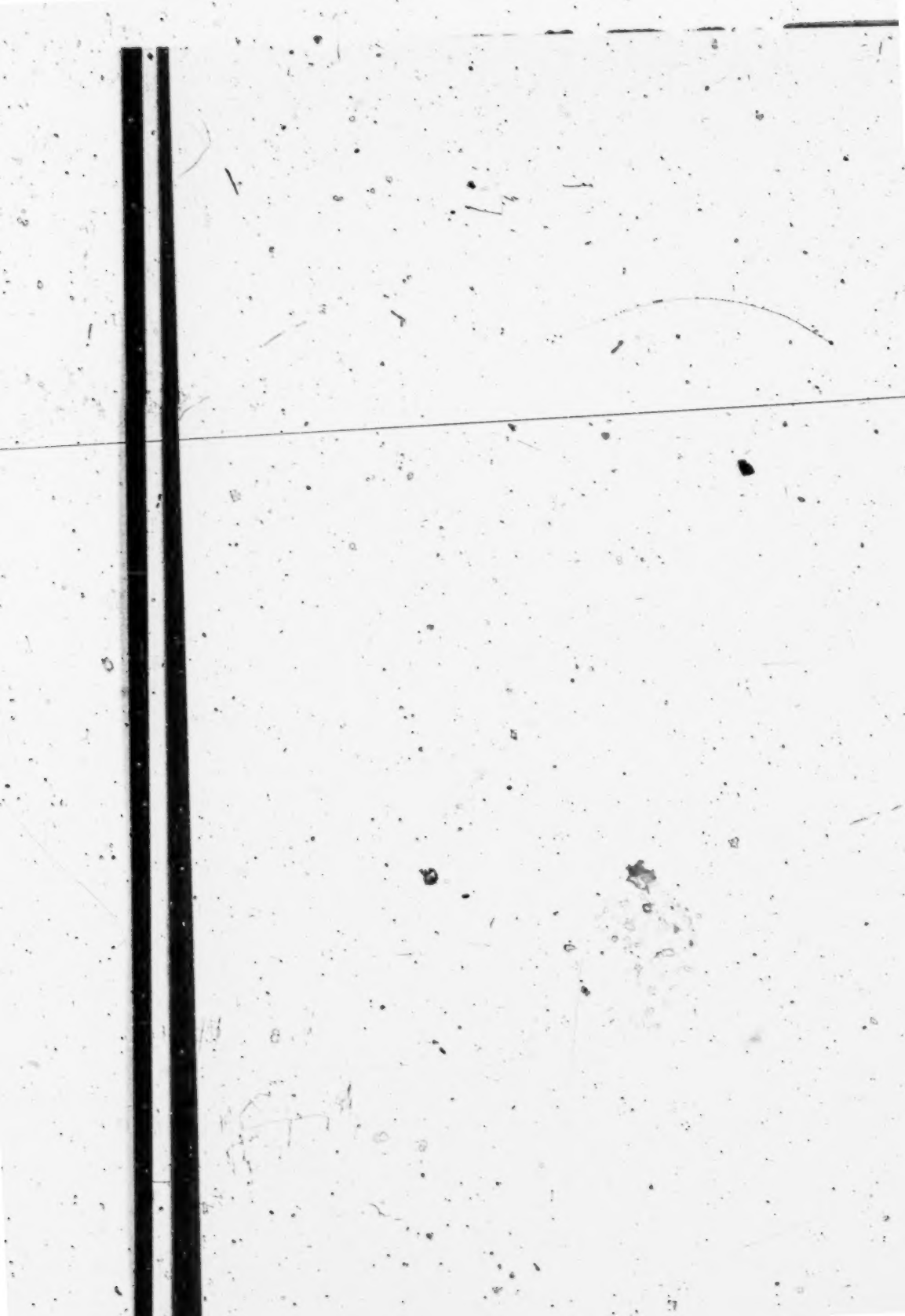

IN THE

United States Circuit Court of Appeals

For the Seventh Circuit

In the Matter of CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC R. R. CO., Debtor.

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7610—UNION TRUST CO. and ILLINOIS STATE TRUST CO., as Trustees, et al., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7611—ISRAEL A. ABRAMS, et al., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7612—H. C. ORTON, et al., etc., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7613—GUARANTY TRUST CO. OF NEW YORK, et al., etc., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7614—CHICAGO, TERRE HAUTE & SOUTHEASTERN RY. CO., Income Mortgage Bondholders' Committee, et al., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7615—UNITED STATES TRUST CO. OF NEW YORK, as Trustee, etc., Appellant v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7616—TRUSTEES OF PRINCETON UNIVERSITY, et al., etc., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

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774 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable Michael L. Igoe, District Judge of the United States for the Northern District of Illinois on 13th day of November, in the year of our Lord one thousand nine hundred and Forty, being one of the days of the regular November Term of said Court, begun Monday, the 4th day of November, and of our Independence the 165th year. Placita.

Present:

Honorable Michael L. Igoe.
William H. McDonnell, U. S. Marshal.
Hoyt King, Clerk.

775 IN THE DISTRICT COURT OF THE UNITED STATES,

Northern District of Illinois,

Eastern Division.

In the Matter of
Chicago, Milwaukee, St. Paul and Pacific Railroad Company, *Debtor.* } No. 60463.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Petition in the above-entitled cause, in the office of the Clerk of the District Court of the United States, for the Northern District of Illinois, Eastern Division, on this the 29th day of June, A. D. 1935.

Filed June 29, 1935.

Petition for Order No. 1.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

PETITION.

To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

The petition of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a railroad corporation (hereinafter referred to as the "Debtor"), respectfully represents:

(1) That the Debtor is a railroad corporation organized and existing under the laws of the State of Wisconsin and is a citizen and resident of said State; that it is a common carrier by railroad engaged in the transportation of persons and property in interstate commerce in the States of Illinois, Indiana, Iowa, Idaho, Michigan, Minnesota, Missouri, Montana, North Dakota, South Dakota, Wisconsin and Washington, and is not a street, suburban or interurban electric railway; that during the six months' period immediately preceding the filing of

this petition the Debtor has had, and now has, its principal operating office in the City of Chicago, Illinois, in the Northern District of Illinois, Eastern Division;

(2) That the lines of railroad owned, leased or operated by the Debtor are subject to certain mortgages and other liens, and certain of the rolling stock and other equipment owned and leased by the Debtor is likewise subject to various liens and reserved rights of lessors and vendors, which said mortgages and other liens and rights directly or indirectly secure outstanding indebtedness of the Debtor, or indebtedness assumed or guaranteed by the Debtor, aggregating, together with other funded debt of the Debtor, the sum of $481,521,686, principal amount, outstanding as of June 30, 1935 (exclusive of accumulated interest on the Five Per Cent. Convertible Adjustment Mortgage Bonds of the Debtor), a statement of said indebtedness being contained in Article I of the Plan of Reorganization annexed hereto as hereinafter mentioned. That $899,000, principal amount, of equipment obligations, secured by liens or reserved rights of lessors and vendors upon equipment leased by the Debtor, became due on April 1, 1935, and are unpaid, and $558,000, principal amount, of similar equipment obligations became due on June 1, 1935, and are unpaid; that $609,000, principal amount, of similar equipment obligations will become due on July 1, 1935; that $10,442.87 of interest on notes executed by the Debtor to The Railroad Credit Corporation became due on June 27, 1935 and are unpaid; that $3,275,899.50, plus accrued interest in the aggregate amount of $133,117.77, will become due June 30, 1935, on notes executed by the Debtor to Reconstruction Finance Corporation; and that interest payments in the aggregate amount of $2,843,612.28 will become due July 1, 1935, upon the General Mortgage Bonds of the Debtor. That the balance of income of the Debtor available for interest on funded debt during the first six months of 1935 is estimated at approximately $1,400,000 (after deducting fixed rents), and that the cash balance of the Debtor on hand on June 30, 1935, is estimated at approximately $4,000,000. That during the twelve months beginning July 1, 1935, additional principal of similar equipment obligations will become due in the aggregate amount of $3,206,580.19, and principal of other obligations will become due in the aggregate amount of $9,533,878.52, and additional fixed interest on all funded debt of

the Debtor (including fixed rents under the lease dated July 1, 1921, from Chicago, Terre Haute and Southeastern Railway Company but excluding short term notes) will become due in the aggregate amount of $11,308,116.81. That, upon information and belief, the Debtor will be unable to procure funds with which to pay and discharge such obligations as they become due and payable.

(3) That the Debtor is unable to meet its debts as they mature, and desires to effect a plan of reorganization pursuant to the provisions of Section 77 of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and Acts amendatory thereof and supplementary thereto.

(4) That a Plan of Reorganization of the Debtor, dated July 1, 1935, a copy of which is annexed hereto marked Exhibit A, has been prepared by the Debtor after numerous conferences with the representatives of more than twenty of the largest holders of various bonds secured by mortgages upon the property owned or leased by the Debtor and, as the Debtor is informed and believes, having aggregate holdings of said bonds in excess of $100,000,000, principal amount.

(5) That the Debtor is, substantially simultaneously with the filing of this petition herein, causing to be filed with the Interstate Commerce Commission a copy of this petition and of said Plan, and requesting the Interstate Commerce Commission to set an early date for a public hearing, at which the Debtor may present said Plan, as provided in said Section 77.

(6) That the filing of this petition by and on behalf of the Debtor was duly authorized by resolutions of the Board of Directors of the Debtor, adopted at a meeting thereof held on the 27th day of June, 1935.

Wherefore, your petitioner prays that an order may be entered approving this petition as properly filed under said Section 77 and that it be granted all other and further relief to which it may be entitled.

Chicago, Milwaukee, St. Paul and
Pacific Railroad Company,
By Henry A. Scandrett,
Its President.

O. W. Dynes and
C. S. Jefferson,
Attorneys for Debtor.

United States of America,
Northern District of Illinois, } ss.:
Eastern Division.

Henry A. Scandrett, being duly sworn, deposes and says that he is an officer, to-wit: President of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a railroad corporation, the petitioning Debtor mentioned and described in the foregoing petition; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes them to be true, and that said petition is filed in good faith.

Henry A. Scandrett.

Subscribed and sworn to before me this 28th day of June, 1935.

W. L. Hunter,
(Seal) *Notary Public, Cook County, Illinois.*

My commission expires February 28, 1938.

Filed June 29, 1935. Henry W. Freeman, Clerk.

EXHIBIT A.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Plan of Reorganization
Dated July 1, 1935

Prepared by Chicago, Milwaukee, St. Paul and Pacific Railroad Company to Effect a Plan of Reorganization Pursuant to Section 77 of the Bankruptcy Act

Definitions of Terms

The following terms when used in the Plan and in the Introductory Statement, except where otherwise indicated by the context, shall have the following meanings respectively:

Railroad Company or C. M. St. P. & P. R. R. Co.: Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a Wisconsin corporation.

Reorganized Company: The Railroad Company as reorganized pursuant to the Plan, or any new corporation organized to carry out the Plan to which the properties of the Railroad Company may be transferred pursuant to the Plan.

Terre Haute or C. T. H. & S. E. Ry. Co.: Chicago, Terre Haute and Southeastern Railway Company, an Indiana corporation.

RFC, RCC, PWA: Reconstruction Finance Corporation, The Railroad Credit Corporation, and Federal Emergency Administration of Public Works, respectively, and their respective successors or assigns.

Terre Haute Lease: The Indenture of Lease dated July 1, 1921, made by the Terre Haute to Chicago, Milwaukee and St. Paul Railway Company.

Bankruptcy Act: The Act of Congress entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and the Acts amendatory thereof and supplementary thereto, as now existing and as it may hereafter be amended.

General Mortgage: The General Mortgage, dated May 1, 1889, of Chicago, Milwaukee and St. Paul Railway Company to The United States Trust Company of New York, Trustee.

General Mortgage Bonds: The Bonds issued under the General Mortgage of any series.

First and Refunding Mortgage: The First and Refunding Mortgage, dated as of February 2, 1925, of the Railroad Company to United States Mortgage and Trust Company and Calvert Brewer, Trustees.

First and Refunding Bonds: The Bonds issued under the First and Refunding Mortgage.

Fifty-Year Mortgage: The Mortgage and Deed of Trust, dated as of February 2, 1925, of the Railroad Company to Guaranty Trust Company of New York and Merrel P. Callaway, Trustees.

Fifty Year Mortgage Bonds: The Bonds issued under the Fifty-Year Mortgage.

Adjustment Mortgage: The Adjustment Mortgage, dated as of February 2, 1925, of the Railroad Company to The National City Bank of New York and William W. Hoffman, Trustees.

Adjustment Bonds: The Bonds issued under the Adjustment Mortgage.

Gary Mortgage: The Deed of Trust, dated April 1, 1908, of Chicago, Milwaukee and Gary Railway Company to Illinois State Trust Company and St. Louis Union Trust Company, Trustees.

Gary Bonds: The Bonds issued under the Gary Mortgage.

Milwaukee & Northern First Mortgage: The Indenture, dated as of June 10, 1880, of Milwaukee & Northern Railroad Company to Jesse Hoyt and Allen S. Apgar, Trustees, and all indentures or agreements supplemental thereto or amendatory thereof or providing for the extension of the Milwaukee & Northern First Mortgage Bonds.

Milwaukee & Northern First Mortgage Bonds: Bonds issued under the Milwaukee & Northern First Mortgage.

Milwaukee & Northern Consolidated Mortgage: The Indenture, dated February 11, 1884, of Milwaukee & Northern Railroad Company to Samuel N. Hoyt and Allen S. Apgar, Trustees, and all indentures or agreements supplemental thereto or amendatory thereof or providing for the extension of the Milwaukee and Northern Consolidated Bonds.

Milwaukee & Northern Consolidated Bonds: Bonds issued under the Milwaukee & Northern Consolidated Mortgage.

Bedford Belt Mortgage: The Indenture, dated June 1, 1898, of The Bedford Belt Railway Company to The Equitable Trust Company, Trustee.

Bedford Belt Bonds: Bonds issued under the Bedford Belt Mortgage.

Southern Indiana Mortgage: The Indenture, dated February 1, 1901, of The Southern Indiana Railway Company to The Equitable Trust Company, Trustee, as supplemented by a Supplemental Mortgage dated as of November 30, 1910, made by the Terre Haute to Girard Trust Company, successor Trustee.

Southern Indiana Bonds: Bonds issued under the Southern Indiana Mortgage.

Terre Haute Refunding Mortgage: The Indenture, dated December 1, 1910, of Chicago, Terre Haute and Southeastern Railway Company to Illinois Trust and Savings Bank and William H. Henkle, Trustees.

Terre Haute Refunding Bonds: Bonds issued under the Terre Haute Refunding Mortgage.

Terre Haute Income Mortgage: The Indenture, dated

December 1, 1910, of Chicago, Terre Haute and Southeastern Railway Company to First Trust and Savings Bank and Louis Boisot, Trustees.

Terre Haute Income Bonds: Bonds issued under the Terre Haute Income Mortgage.

Leased Line Bonds: Bedford Belt Bonds, Southern Indiana Bonds, Terre Haute Refunding Bonds, and Terre Haute Income Bonds.

Equipment Obligations: Equipment Trust Certificates issued under Equipment Trusts, covering equipment leased to the Railroad Company, including, unless the context otherwise requires, Equipment Trust Certificates, Series A, C, D, E, F, G, H, J, K, L, M and N.

Preferred Stock: Preferred Stock of the Railroad Company.

Common Stock: Common Stock of the Railroad Company.

Stock: Includes Common and Preferred Stock and Voting Trust Certificates therefor.

Voting Trust Certificates: Certificates issued under the Voting Trust described in Article VII of the Plan.

Securities: Includes bonds, stocks, voting trust certificates, equipment obligations, notes and endorsements, except where otherwise indicated by the context.

New Securities: The securities issuable in accordance with the Plan or the existing securities as modified by the Plan and redelivered upon consummation of the Plan.

Introductory Statement

Chicago, Milwaukee, St. Paul and Pacific Railroad Company was vested with its present properties in January, 1928, as the result of a reorganization of its predecessor company. Upon the consummation of that reorganization its annual fixed interest charges on funded debt, including short term equipment notes subsequently funded, were $12,424,605, with contingent interest charges of $9,143,685, as compared with corresponding fixed charges on funded debt of its predecessor of $20,305,182. Its fixed interest charges on funded debt for 1934 were $13,494,589.

Total operating revenues of the Railroad Company and income available for interest on funded debt for the years 1928 to 1934, inclusive, have been as follows:

	Total Operating Revenues	Income Available for Interest on Funded Debt[1]
1928[2]	$165,303,694	$30,498,754
1929	171,361,385	29,076,068
1930	142,569,632	17,901,207
1931	111,423,772	9,190,517
1932	84,900,833	287,942 (Deficit)
1933	85,495,220	8,523,433
1934	87,859,792	6,390,653

The Railroad Company failed to earn its fixed interest charges on funded debt during the years 1931 to 1934, inclusive, by the total amount of $31,167,460. During that period the Railroad Company was enabled to meet its charges by means of the cash provided in the 1928 reorganization, the excess of earnings over fixed and contingent interest through the year 1929, and borrowings from the Reconstruction Finance Corporation and Railroad Credit Corporation. However, in view of decreasing earnings and depletion of its cash resources, the Railroad Company did not pay $1,457,000 of equipment obligations which matured April 1 and June 1 of this year, and, with a balance of income available for interest on funded debt during the first six months of 1935 estimated at approximately $1,400,000 (as compared with $2,603,485 for the corresponding period in 1934, and after crediting back in 1935 $746,043 in respect of Railroad Retirement Fund Reserve set aside in 1934), will be unable to meet the interest payable July 1 1935, upon its General Mortgage Bonds, and will also be unable to provide for payment of $3,275,900, (and accrued interest of $133,118) due June 30, 1935, on the Reconstruction Finance Corporation loans and $609,000 of equipment obligations maturing July 1, 1935. It is the belief of the Board of Directors of the Railroad Company that further borrowings for the purpose of meeting fixed charges upon the present capital structure are inadvisable and that a readjustment of the present capital structure is necessary.

[1] Determined after payment of rental under Terre Haute Lease.

[2] Commencing January 14, 1928.

Realizing the probability of such a necessity, the Board of Directors has been studying the problem of reorganization for several months and prepared a tentative plan for readjusting the capital structure of the Railroad Company. Numerous conferences on this tentative plan were held with representatives of the largest security holders, resulting in important modifications which are incorporated in the following Plan of Reorganization. For the purpose of carrying out the Plan, the Railroad Company has filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, a petition under Section 77 of the Bankruptcy Act, and has requested the Interstate Commerce Commission to set an early date for a public hearing upon the Plan as contemplated by that Act.

It is the belief of the Board of Directors that under present conditions no definite estimate of the future earning capacity of the properties of the Railroad Company is possible, and that while current earnings do not indicate the existence of any earning power for the present stock of the Railroad Company, it would be inequitable at this time to reorganize under a plan which eliminated entirely the investment of the stockholders. The properties held for and used in transportation, including the leased lines of Chicago, Terre Haute and Southeastern Railway Company, upon the basis of the Interstate Commerce Commission's valuation under Section 15a of the Interstate Commerce Act, have a value in excess of $730,000,000, as against total indebtedness outstanding in the hands of the public of approximately $551,000,000, including leased line bonds and accumulated interest on the Adjustment Bonds.

The Plan is also predicated upon the opinion reported by the accounting officers of the Railroad Company to the Board of Directors, that the properties leased from Chicago, Terre Haute and Southeastern Railway Company have in recent years earned, and are today earning, more than the full rental under the lease (which includes interest upon the bonds secured by mortgages upon the leased lines), in addition to providing the lines directly owned by the Railroad Company with traffic upon which a substantial profit is earned. The Plan is also predicated upon the opinion reported by the accounting officers of the Railroad Company to the Board of Directors, that the lines of railroad covered by the mortgages securing the bonds of Milwaukee & Northern Railroad Company are earning today substantially the full amount of the interest payable upon

such bonds, in addition to supplying profitable traffic to other lines of the Railroad Company.

The holders of its securities, with whom conferences on the Plan have been had, have included representatives of more than twenty insurance companies, trust companies and savings banks, owning in excess of $100,000,000 of various issues of bonds affected by the Plan. Conferences have also been had with representatives of the Reconstruction Finance Corporation concerning the Plan and the participation therein of that Corporation.

The Plan represents compromises of numerous points of view and differences of opinion on various details. The soundness of the resulting capital structure will necessarily be determined by the earning capacity of the property in the future. The Board of Directors of the Railroad Company believes that the Plan equitably preserves the existing priorities and rights of the various classes of securities affected, making equitable compensation for sacrifices required by the situation, and may have the support of sufficient amounts of securities to permit of its consummation under the Federal Bankruptcy Act if approved by the Interstate Commerce Commission and the Court as herein provided.

PLAN OF REORGANIZATION

I.

Capitalization, July 1, 1935

(Including RFC and RCC Notes and accumulated interest on Adjustment Bonds)

C. M. St. P. & P. R. R. Co.

	Principal Amount Outstanding	Interest accruals (12 mos. ending June 30, 1936)
Fixed Interest Bearing:		
Milwaukee & Northern Railroad Company First Mortgage 4½% Bonds	$ 2,117,000[1]	$ 95,265.00
Milwaukee & Northern Railroad Company Consolidated Mortgage 4½% Bonds	5,072,000[2]	228,240.00
Both said issues matured June 1, 1934. All except $39,000 of said First Mortgage Bonds and $223,000 of said Consolidated Mortgage Bonds have been assumed by C. M. St. P. & P. R. R. Co. and extended to June 1, 1939.		

[1] Does not include $38,000 of bonds pledged under C. M. St. P. & P. R. R. Co. First and Refunding Mortgage.

[2] Does not include $20,000 of bonds pledged under C. M. St. P. & P. R. R. Co. First and Refunding Mortgage.

		Principal Amount Outstanding	Interest accruals (12 mos. ending June 30, 1936)
Chicago, Milwaukee and Gary Railway Company First Mortgage Five Per Cent Forty Year Bonds, due April 1, 1948		3,000,000[1]	150,000.00
Chicago, Milwaukee and St. Paul Railway Company General Mortgage Bonds, due May 1, 1989:			
Series A, 4%		$ 48,241,000	$1,929,640.00
Series B, 3½%		8,950,000	313,250.00
Series C, 4½%		42,597,000	[2]1,916,865.00
Series E, 4½%		24,000,000	1,080,000.00
Series F, 4¾%		15,000,000	712,500.00
Series G, 5%, pledged for RFC Loans	11,212,000		
Chicago, Milwaukee, St. Paul and Pacific Railroad Company First and Refunding Mortgage 6% Bonds, Series A, due June 1, 1943:			
Pledged to secure RFC and RCC loans	6,000,000		
Pledged to secure PWA loan	2,665,000		
Pledged with Trustee under Equipment Trust, Series M	258,000		
Held in treasury	943,000		
	9,866,000		
Chicago, Milwaukee, St. Paul and Pacific Railroad Company Fifty Year Five Per Cent. Mortgage Bonds, due February 1, 1975		106,395,096	5,319,754.80
Equipment Trust Certificates, Series A, C, D, E, F, G, H, J, K and L, due in varying amounts from 1935 to 1945, ($1,457,090 overdue)		24,011,000	988,917.92
Annual Maturities			
3,384,000—1935			
3,649,000—1936			
3,649,000—1937			
3,110,000—1938			
2,210,000—1939			
2,210,000—1940			
1,592,000—1941			
1,480,000—1942			
1,480,000—1943			
983,000—1944			
284,000—1945			
Equipment Trust Certificates, Series M and Series N, 4%, all held by Federal Emergency Administration of Public Works (Series M additionally secured by pledge with the Trustee of the Equipment Trust of $258,000, principal amount, of First and Refunding Mortgage 6% Bonds, Series A), Series M due March 1, 1936 to September 1, 1947 in 24 semi-annual instalments, Series N due May 1, 1936 to May 1, 1945 in 10 annual instalments		$ 1,657,000	$ 55,174.92[2]

[1] Does not include $2,700,000 of bonds pledged under C. M. St. P. & P. R. R. Co. First and Refunding Mortgage.

[2] Interest on Series M commences to accrue on $500,000, principal amount, on May 11, 1935; on $800,000, principal amount, on July 20, 1935; and on $237,000, principal amount, on November 9, 1935; on Series N, $106,000, principal amount, on June 21, 1936.

	Principal Amount Outstanding	Interest accruals (12 mos. ending June 30, 1936)
Reconstruction Finance Corporation Loans, evidenced by promissory notes, bearing interest presently at rate of 4%, due in varying amounts from June 30, 1935, to February 27, 1936, secured by pledge of assignment of advances to Chicago Union Station Company in the amount of $3,793,360.61, and: $11,212,000 General Mortgage 5% Bonds, Series G, 6,000,000 First and Refunding Mortgage 6% Bonds, Series A, 301,000 Bellingham Bay & British Columbia R. R. Co. First Mortgage 5% Bonds.....	11,499,462	459,978.48
Federal Emergency Administration of Public Works 4% Loan, evidenced by promissory notes, due in varying amounts from January 1, 1937, to January 1, 1944, secured by the pledge of $2,665,000, principal amount, of First and Refunding Mortgage 6% Bonds, Series A	2,291,000	91,640.00[1]
The Railroad Credit Corporation Loans, evidenced by promissory notes, interest at New York Federal Reserve Bank rediscount rate (now 1½%), secured by pledge of entire stock of Milwaukee Land Company and agreement for application of proceeds of sale of timber by Milwaukee Land Company, the Railroad Company's distributive share in the fund established under the Marshalling and Distributing Plan, 1931, and, subject to the Reconstruction Finance Corporation Loans and any additional loans hereafter made by Reconstruction Finance Corporation, the collateral pledged to secure all such loans.....	2,995,316	45,678.57
General American Tank Car Corporation Sub-Lease, due monthly, in varying amounts to October 1, 1945, annual interest 5.9+%, subject to General American Tank Car Corporation Equipment Trust, Series 21, securing an original issue of General American Tank Car Equipment Trust Certificates, Series 21, in the principal amount of $756,000, now outstanding in the principal amount of $486,000, due in equal annual instalments to June 1, 1944	822,119	47,225.08
Aggregate Principal and Interest.....	298,647,993	13,434,669.77
Contingent Interest Bearing:		
Five Per Cent. Convertible Adjustment Mortgage Bonds, due January 1, 2000.....	182,873,693	9,143,684.65
Accumulated interest thereon from January 1, 1930 to June 30, 1935.....	47,547,160	

[1] Interest commenced to accrue on $1,160,000, principal amount, on April 13, 1935; and on $1,131,000, principal amount, on May 18, 1935.

	Principal Amount Outstanding	Preferential dividend
Stock:		
Non-cumulative Participating 5% Preferred Stock, 1,193,073 shares at $100 par value, entitled to dividends at the rate of 5% in any year before dividends shall be paid or declared upon the Common Stock, entitled to share equally with the Common Stock after the latter has received $5 per share in any year, and entitled to $100 per share on liquidation before any distribution to Common Stock	119,307,300	5,965,365.00
Common Stock, 1,174,060 shares, without par value	105,175,303	
Total C. M. St. P. & P. R. R. Co. Capitalization, including RFC and RCC loans and accumulated interest on Adjustment Bonds	753,551,449[1]	

[1] The Railroad Company has also assumed liability in respect of the principal and interest of $69,100,000 outstanding principal amount of bonds of Chicago Union Station Company (jointly and severally with three other proprietary railroad companies); $49,569,000 outstanding principal amount of bonds of Kansas City Terminal Railway Company (jointly and severally with eleven other proprietary railroad companies); $14,945,000 outstanding principal amount of bonds of St. Paul Union Depot Company (jointly and severally with eight other proprietary railroad companies); $9,225,000 outstanding principal amount of bonds of Indiana Harbor Belt Railroad Company (jointly and severally as to $5,000,000 outstanding principal amount thereof with three other proprietary companies, and as to $4,225,000 outstanding principal amount thereof the Railroad Company and the Chicago & Northwestern R. R. Co. have agreed, each to the extent of 20%, to protect the Michigan Central R. R. Co. and the Lake Shore & Michigan Southern Ry. Co. on the latter's guaranty thereof); $2,036,000 outstanding principal amount of bonds of Minnesota Transfer Railway Company (the Railroad Company with eight other proprietary railroad companies being liable, under the By-laws of the Minnesota Transfer Railway Co., to contribute toward a sinking fund for the bonds, each stockholder paying semi-annually its proportion (1/9th) of ½ of 1% of the face value of all bonds issued). The agreements relating to the guaranty of the bonds of Kansas City Terminal Railway Company and of St. Paul Union Depot Company, entered into by the Railroad Company's predecessor, have not been expressly assumed by the Railroad Company, although such agreements were not disaffirmed in the reorganization proceedings of the Railroad Company's predecessor, and the Railroad Company has continued to make the payments under such agreements. There is not included in the foregoing statement of capitalization the Austin Western Road Machinery Lease in the amount of $62,200 due in varying monthly amounts to July, 1937.

C. T. H. & S. E. Ry. Co. (Leased Line)

The rental under the lease of Chicago, Terre Haute and Southeastern Railway Company[2] dated July 1, 1921, includes payment of interest upon the following bonds in the following amounts:

	Principal Amount Outstanding	Interest accruals (12 mos. ending June 30, 1936)
Bedford Belt Railway Company First Mortgage 5% Bonds, due July 1, 1938	$ 250,000[3]	$ 12,500.00
Southern Indiana Railway Company First Mortgage Four Per Cent. Bonds, due February 1, 1951	7,287,000	291,480.00
Chicago, Terre Haute and Southeastern Railway Company First and Refunding Mortgage Fifty Year Five Per Cent. Bonds, due December 1, 1960	8,056,000[4]	402,800.00
Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Fifty Year 5% Bonds, due December 1, 1960	6,336,000[5]	316,800.00
Aggregate principal and Interest	$ 21,929,000	$1,023,580.00

Under the Terre Haute Lease the lessee assumes payment of principal and interest of all the foregoing Bonds, but the Lease permits the lessee to extend, renew, or refund with new bonds of the lessor, all Terre Haute Refunding Bonds and Terre Haute Income Bonds upon maturity thereof.[6] The Lease also requires the lessee to perform all of the covenants and obligations contained in the respective mortgages securing such Bonds, including covenants with respect to the maintenance of equipment.

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[2] 40,470.95 shares of the stock of the Terre Haute (out of 41,729.95 shares outstanding) are owned by C. M. St. P. & P. R. R. Co. and 40,457.20 shares thereof are pledged under the C. M. St. P. & P. R. R. First and Refunding Mortgage.

[3] Does not include $100,000 of bonds pledged under the Terre Haute Refunding Mortgage.

[4] Does not include $1,515,000 of bonds pledged under C. M. St. P. & P. R. R. Co. First and Refunding Mortgage.

[5] Entitled to one vote for each $100 principal amount of Bonds, representing voting power exceeding the outstanding shares.

[6] The Bedford Belt Bonds and Southern Indiana Bonds may be refunded with Terre Haute Refunding Bonds, and under the Terre Haute Lease the lessee assumes payment of all Terre Haute Refunding Bonds mentioned therein and any additional Terre Haute Refunding Bonds issued pursuant to the terms of said Lease. Under said Lease the lessee agrees to pay absolutely the interest on the Terre Haute Income Bonds without regard to whether or not there are surplus net earnings or income of the leased properties sufficient therefor.

II.

Treatment of Existing Securities
C. M. St. P. & P. R. R. Co.

(1) To remain undisturbed:

$822,119, General American Tank Car Corporation Equipment Trust Sub-Lease;
$120,000, Equipment Trust Certificates, Series N;

(2) To remain undisturbed as to lien and interest but the collateral pledged therefor to be extended as to principal and the mortgage securing the collateral to be modified:

$2,291,000, Notes to The Federal Emergency Administration of Public Works;
$1,537,000, Equipment Trust Certificates, Series M;

The above-described Notes and Equipment Trust Certificates shall remain undisturbed, but the $2,665,000, principal amount, of First and Refunding Mortgage 6% Bonds, Series A, pledged for such Notes, and the $258,000, principal amount, of First and Refunding Mortgage 6% Bonds, Series A, pledged with the Trustee of Equipment Trust, Series M, shall be extended to June 1, 1958, and the First and Refunding Mortgage shall be modified as hereinafter in Article V provided.

(3) To remain undisturbed as to lien and interest but to be extended as to principal and changes to be made in the collateral pledged therefor:
$11,499,462, Notes to Reconstruction Finance Corporation;

The maturity of all the existing Notes shall be extended to July 1, 1945, with interest thereon at the rate of 4% per annum, payable semi-annually, and the Notes as extended shall be secured by the existing collateral now pledged for the existing Notes as described in Article I hereof, and any additional collateral which may be pledged to secure any loans hereafter made by Reconstruction Finance Corporation to the Reorganized Company as hereinafter in Article VI provided. The $6,000,000, principal

amount, of First and Refunding Mortgage 6% Bonds, Series A, now pledged for such Notes shall be extended to June 1, 1958, and the First and Refunding Mortgage shall be modified as hereinafter in Article V provided.

$2,995,316, Notes to the Railroad Credit Corporation;

The maturity of all the existing Notes shall be extended to July 1, 1945, with interest thereon, after the maturity of the existing Notes, at the rate of 4% per annum, payable semi-annually, and the Notes as extended shall be secured by the existing collateral now pledged for the existing Notes, as described in Article I hereof, except as hereinafter provided, and shall be additionally secured by the pledge of a demand note of Milwaukee Land Company to the Railroad Company in the amount of $9,870,000. The Railroad Credit Corporation shall surrender its right, as now provided in the existing Notes, to a lien, subject to the prior lien of Reconstruction Finance Corporation, upon any collateral hereafter pledged by the Reorganized Company with Reconstruction Finance Corporation to secure any loans made by Reconstruction Finance Corporation to the Reorganized Company.

(4) To remain undisturbed as to lien and interest but to be extended in part as to principal:

$24,011,000, Equipment Trust Certificates, Series A, C, D, E, F, G, H, J, K, and L;

The principal of each Equipment Trust Certificate of each of said series presently maturing between April 1, 1935, and December 31, 1940, inclusive, shall be extended to mature 20% on the date of the present maturity and 20% annually one, two, three and four years, respectively, from said date.[1] The extended Equipment Trust Certificates shall be entitled to the benefit of a fund set aside for the

[1] Upon such extension, the annual maturities of the Equipment Trust Certificates will be as follows:

1935	$ 672,800
1936	1,402,600
1937	2,132,400
1938	2,754,400
1939	3,196,400
1940	2,965,600
1941	3,827,800
1942	2,986,000
1943	2,364,000
1944	1,425,000
1945	284,000

purchase thereof out of Available Net Income as hereinafter in Article IV provided.

(5) To remain undisturbed as to lien and interest but to be extended as to principal, certain defaults to be waived and the mortgages to be otherwise modified:

$2,117,000, Milwaukee & Northern Railroad Company First Mortgage 4½% Bonds, due June 1, 1939[2];

$5,072,000, Milwaukee & Northern Railroad Company Consolidated Mortgage 4½% Bonds, due June 1, 1939[3];

The maturity of both such issues (including the Bonds of both issues not heretofore extended and assumed pursuant to the Plan of Extension dated March 14, 1934) shall be extended to June 1, 1949, and payment of principal and interest of all Bonds (including Bonds not heretofore assumed by the Railroad Company) shall be assumed by the Reorganized Company.

The Milwaukee & Northern First Mortgage and the Milwaukee & Northern Consolidated Mortgage shall be modified as hereinafter in Article V provided.

$9,866,000, Chicago, Milwaukee, St. Paul and Pacific Railroad Company First and Refunding Mortgage 6% Bonds, Series A, Due June 1, 1943;

The maturity of such First and Refunding Bonds, presently pledged or held in the treasury as described in Article I hereof, shall be extended to June 1, 1958.

The First and Refunding Mortgage shall be modified as hereinafter in Article V provided.

(6) To remain undisturbed as to lien and maturity of principal, but part of interest to become contingent, certain defaults to be waived and the mortgage to be otherwise modified:

$150,000,000, Chicago, Milwaukee and St. Paul Railway Company General Mortgage Bonds, Series A, B, C, E, F, and G, due May 1, 1989;

Interest accruing on bearer General Mortgage Bonds from January 1, 1935 (and on fully registered General Mortgage Bonds from April 1, 1935), to January 1, 1945,

[2] $38,000 of Bonds pledged under the C. M. St. P. & P. R. R. Co. First and Refunding Mortgage shall also be included in the Plan.

[3] $20,000 of Bonds pledged under the C. M. St. P. & P. R. R. Co. First and Refunding Mortgage shall also be included in the Plan.

shall be two-thirds fixed, and one-third contingent, such one-third to be payable out of Available Net Income as hereinafter provided in Article IV hereof; provided, however, that if full interest on all General Mortgage Bonds outstanding (exclusive of any pledged General Mortgage Bonds) shall be earned for any three calendar years (whether or not in consecutive years) during the five years commencing on the January 1st next succeeding the date of the final confirmation of the Plan by the Court, or shall be earned for the last two calendar years of such five-year period commencing on said January 1st, then and in either such case, interest on the General Mortgage Bonds shall, commencing at the end of said five-year period, cease to be contingent in part as aforesaid and all of the interest on the General Mortgage Bonds shall thereafter be and become fixed, or if full interest on all General Mortgage Bonds outstanding shall be earned for any period of three consecutive calendar years ending after such five-year period, then interest on the General Mortgage Bonds shall, commencing at the end of said three-year period, cease to be contingent in part as aforesaid and all of the interest on the General Mortgage Bonds shall thereafter be and become fixed. Payment of such contingent interest shall be mandatory to the extent of the existence of such Available Net Income in any Income Period in excess of the amount, as in Article IV provided, applied to the Contingency Reserve Fund, and shall be cumulative to the extent not paid. All accumulations of interest, not theretofore paid, shall be due and payable on January 1, 1945, but without interest thereon. That part of the interest upon the fully registered General Mortgage Bonds which continues as fixed interest shall continue to be payable quarterly as provided in the existing General Mortgage Bonds, but that part of the interest upon the fully registered General Mortgage Bonds which shall hereafter be contingent and payable out of Available Net Income shall be dealt with on a semi-annual basis, as hereinafter in Article IV provided. The Reorganized Company may pay contingent interest on the General Mortgage Bonds at any time, whether or not there shall be Available Net Income applicable to the payment thereof.

The General Mortgage Bonds shall be entitled to the benefit of the Sinking Fund payable out of Available Net Income as hereinafter in Article IV provided.

The General Mortgage shall be modified as hereinafter in Article V provided.

(7) To remain undisturbed as to lien and maturity of principal, but all of interest to become contingent, certain defaults to be waived and the mortgages to be otherwise modified:

$106,395,096, Chicago, Milwaukee, St. Paul and Pacific Railroad Company Fifty-Year Five Per Cent. Mortgage Bonds, due February 1, 1975;

$3,000,000, Chicago, Milwaukee and Gary Railway Company First Mortgage Five Per Cent Forty Year Bonds, due April 1, 1948;[1]

From the date of the last coupon paid (February 1, 1935, in the case of the Fifty-Year Mortgage Bonds and April 1, 1935, in the case of the Gary Bonds) interest on the Fifty Year Mortgage Bonds and the Gary Bonds shall be contingent and payable out of Available Net Income as hereinafter in Article IV provided. Payment of such contingent interest shall be mandatory to the extent of the existence of such Available Net Income in any Income Period in excess of such amounts as may be applied, as in Article IV provided, out of the Available Net Income during such Income Period, to the Contingency Reserve Fund, to the payment of contingent interest on the General Mortgage Bonds, to payments into the Capital Fund and to the purchase of extended instalments of equipment trust obligations. Such contingent interest shall be cumulative to the extent not so paid, and all accumulations of interest, not theretofore paid, shall be due and payable at the maturity of the principal of such Bonds, but without interest thereon. If at any time the unpaid interest accumulated upon such Bonds of either issue shall aggregate ten years' interest thereon, the trustee under the mortgage securing the Bonds of such issue may, and if so requested by the holders of at least 50% in principal amount of the outstanding Bonds of such issue shall, declare the principal amount of the Bonds of such issue to be immediately due and payable, with the same rights and remedies provided in the mortgage securing the Bonds of such issue as in the case of the failure of payment of principal of the Bonds of such issue upon maturity thereof.

[1] $2,700,000 of Bonds pledged under the C. M. St. P. & P. R. R. Co. First and Refunding Mortgage shall also be included in the Plan.

Such Bonds of both issues shall be convertible into the new 5% Non-cumulative Preferred Stock hereinafter described, at par, and shall be entitled to the benefit of the Sinking Fund payable out of Available Net Income as hereinafter in Article IV provided.

The Fifty-Year Mortgage and the Gary Mortgage shall be modified as hereinafter in Article V provided.

(8) To be converted into new stock:

$182,873,693, Chicago, Milwaukee, St. Paul and Pacific Railroad Company Five Per Cent. Convertible Adjustment Mortgage Bonds, due January 1, 2000;

The holders of the Adjustment Bonds shall receive for each $1,000, principal amount, of Adjustment Bonds, together with $260 accumulated interest thereon to June 30, 1935, Voting Trust Certificates, as in Article VII provided, for $1,260 par value of new 5% Non-Cumulative Preferred Stock, of the par value of $100 per share, participating equally per share in dividends with the Common Stock after the latter has received 5% upon the par value thereof in dividends in any year, preferred as to assets as well as dividends, and entitled to one vote per share on all matters, all as hereinafter in Article VIII more fully described. (2,304,208.53 shares).

(9) To be exchanged for new stock:

Preferred Stock: The holders of Preferred Stock shall receive for each share of Preferred Stock a Voting Trust Certificate, as in Article VII provided, for one share of new Common Stock, of the par value of $25 per share, all as hereinafter in Article VIII hereof more fully described. (1,193,073 shares).

Common Stock: The holders of Common Stock will receive for each share of Common Stock a Voting Trust Certificate, as in Article VII provided, for one-third share of new Common Stock, of the par value of $25 per share, all as hereinafter in Article VIII more fully described. (391,353⅓ shares).

C. T. H. & S. E. Ry. Co. (Leased Line)

$250,000, Bedford Belt Railway Company First Mortgage 5% Bonds, due July 1, 1938.[1]

$7,287,000, Southern Indiana Railway Company First Mortgage Four Per Cent Bonds, due February 1, 1951.

$8,056,000, Chicago, Terre Haute and Southeastern Railway Company First and Refunding Mortgage Fifty Year Five Per Cent Bonds, due December 1, 1960.[2]

$6,336,000, Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Fifty Year 5% Bonds, due December 1, 1960.

The Terre Haute Lease, and the obligations of the lessee thereunder to the holders of the Bonds of each of the above mentioned issues, shall be modified substantially as follows:

(a) All defaults, if any, in the performance of the covenants contained in the Terre Haute Lease to be performed by the lessee thereunder which shall have occurred on or before June 30, 1935, shall be waived, and the lessee shall not be obligated thereafter to remedy any such defaults, including replacement of equipment retired on or before June 30, 1935.

(b) The lessee under the Terre Haute Lease shall be entitled and obligated to replace at any time on or before July 1, 1945, vacancies in equipment subject to the mortgages securing said Bonds occurring on or after July 1, 1935, and on or before July 1, 1945, and in the performance of such obligation the lessee or the mortgagor company or companies under such mortgages shall be entitled to include equipment purchased under equipment trusts in principal amount not exceeding 80% of the original cost of the equipment covered thereby.

Holders of each of the foregoing classes of Bonds shall also agree with the Reorganized Company, as lessee under the Terre Haute Lease, not to take, or cause the trustee under any of said mortgages to take, any action or proceeding, whether against the lessee or against the lessor under the Terre Haute Lease, and whether under said Lease or under any of said mortgages, in respect of any default

[1] $100,000 of Bonds pledged under the Terre Haute Refunding Mortgage shall also be included in the Plan.

[2] $1,515,000 of Bonds pledged under the C. M. St. P. & P. R. R. Co. First and Refunding Mortgage shall also be included in the Plan.

under said Lease or under any of said mortgages which shall have occurred on or before June 30, 1935, or in respect of any default in respect of the maintenance or replacement of equipment under any of said mortgages, except a default by the lessee under the equipment maintenance provisions of said Lease modified as provided in the foregoing clause (b).

If holders of each of the foregoing classes of Bonds shall become bound by the foregoing modifications of the Terre Haute Lease and agreements with the Reorganized Company as aforesaid, the Reorganized Company shall not elect to reject or terminate the Terre Haute Lease.

III.

Comparative Capitalization and Interest Charges
(including C. T. H. & S. E. Ry. Co.)

	Present Capitalization[1]	Present Interest Charges (12 mos. ending June 30, 1936)		Capitalization Giving Effect to Plan of Reorganization[1]	Interest Charges Giving Effect to Plan of Reorganization (12 mos. ending June 30, 1936)	
		Fixed	Contingent		Fixed	Contingent
Bonds undisturbed as to interest	$ 29,118,000	$ 1,347,085		$ 29,118,000	$1,347,085	
Bonds disturbed as to interest	248,183,096	11,422,910		248,183,096	3,968,170	$7,453,840
Equipment Trusts[2]	26,490,119	1,091,858		26,490,119	1,234,594	
RFC RCC and PWA Loans[3]	16,785,778	597,297		16,785,778	597,297	
Adjustment Bonds	182,873,693		9,143,685			
(Accumulated Interest to June 30, 1935)	47,547,160					
Preferred Stock	119,307,300			230,420,853		
Common Stock	105,175,303			39,610,658		
Total	775,480,449	14,458,250	9,143,685	590,608,504	7,147,146	7,453,840

[1] Excluding pledged bonds.
[2] Not including new Equipment Trust Certificates, to be purchased by RFC.
[3] Not including new RFC loans.

IV.

Determination and Application of Available Net Income.

1. Available Net Income shall be determined for each period of six months ending June 30 and December 31 (herein sometimes called Income Periods), beginning with the Income Period ending June 30, 1935, as promptly as practicable after the termination of such Income Period. Available Net Income for any Income Period shall be determined by deducting from the "Income of the Reorganized Company available for fixed charges," for such Income Period (determined in accordance with the accounting rules of the Interstate Commerce Commission, or other analogous Federal authority having jurisdiction in the premises, at the time in force) the fixed charges accruing during such Income Period and all other amounts properly deductible from such income in determining income after fixed charges.

2. Available Net Income for each Income Period shall, subject to the provisions of this Article IV and subject to the power of the Board of Directors of the Reorganized Company, when necessary in its discretion, to create and maintain therefrom a Contingency Reserve Fund not exceeding $3,000,000 at any one time, be applied to the following purposes and in the following order:

(a) To the payment on April 1 and October 1 in each year, commencing October 1, 1935, of that part of the interest upon the General Mortgage Bonds which is converted into contingent interest by the Plan and which, but for the provisions of the Plan, would have been payable on the next preceding January 1 or July 1, respectively, together with all accumulations of such interest not theretofore paid. Contingent interest on fully registered General Mortgage Bonds which, but for the provisions of the Plan, would have been payable on April 1 or October 1, respectively, in any year, shall, for the purposes of application of Available Net Income, be treated as if it would have been payable on the next succeeding July 1 or January 1, respectively.

(b) Any then remaining Available Net Income may, in the discretion of the Board of Directors of the Reorganized Company, but subject to the approval of the Finance Committee, as hereinafter in

Article VII provided, be applied to the creation of a Capital Fund to be applied to provide for, or to reimburse the treasury of the Reorganized Company for, capital expenditures (including therein initial payments on equipment leased under equipment trusts) made during such Income Period, provided, however, that (1) to the extent that expenditures are so provided for or reimbursed out of the Capital Fund, the Reorganized Company shall not thereafter have the right to issue any bonds or other evidences of indebtedness to capitalize or reimburse such expenditures, and (2) the amount set aside in the Capital Fund out of the Available Net Income of any calendar year shall not exceed $5,000,000.

(c) Any then remaining Available Net Income shall be applied to the purchase of the then latest maturing extended instalment of each series of equipment obligations which, but for the extension thereof provided for in the Plan, would have matured by their terms on or before the last day of such Income Period, and which shall be tendered to the Reorganized Company for such purchase at not more than the principal amount thereof, with accrued interest; provided, however, that not more than one such maturing extended instalment of any one series shall be so purchased in any calendar year. To the extent that the Available Net Income of any Income Period set aside for such purchase shall not be required to purchase such equipment obligations tendered during the next succeeding Income Period, such remaining amount shall be carried forward and added to the Available Net Income for the next succeeding Income Period.

(d) Any then remaining Available Net Income shall be applied to the payment on May 1 and November 1 in each year, commencing November 1, 1935, of the contingent interest which, but for the provisions of the Plan, would have been payable on the next preceding February 1 or August 1, respectively, on the Fifty-Year Mortgage Bonds, and which, but for the provisions of the Plan, would have been payable on the next preceding April 1 or October 1, respectively, on the Gary Bonds, together with all accumulations of such interest on the Bonds of both such issues not theretofore paid. Payment shall

be made as between interest on the Fifty Year Mortgage Bonds and interest on the Gary Bonds in the proportions of their respective principal amounts at the time outstanding in the hands of the public.

(e) Any then remaining Available Net Income shall be applied to the creation of a Sinking Fund in an amount not exceeding in any Income Period ten per cent. of the Available Net Income for such Income Period remaining after making the foregoing applications thereof, and not exceeding $250,000 in any Income Period. Said Sinking Fund shall be applied to the purchase on or before November 1 in each year, at not exceeding their redemption price, of either General Mortgage Bonds, Fifty-Year Mortgage Bonds or Gary Bonds, as the Board of Directors may determine, and to the extent not so applied at said date, shall be applied to the redemption, at their redemption price, of such of said Bonds as the Board of Directors may determine, on the next succeeding redemption date as specified in the respective mortgages securing said Bonds.

(f) Any then remaining Available Net Income may be applied as the Board of Directors may determine for general corporate purposes or for the payment of dividends on the Preferred Stock or Common Stock of the Reorganized Company.

3. The Board of Directors of the Reorganized Company shall, as promptly as practicable after the consummation of the Plan, determine the amount of Available Net Income for all Income Periods ending prior thereto, and shall promptly apply all such Available Net Income for such Income Periods as so determined for the purposes set forth in the foregoing provisions of this Article IV, but without interest on any amounts which would otherwise have been payable prior thereto in accordance with the foregoing provisions of this Article IV.

4. That part of the interest on the General Mortgage Bonds which is contingent shall be required to be paid prior to January 1, 1945 only if the amount of Available Net Income applicable to the payment of such contingent interest in any Income Period shall be equal to interest at the rate of one-fourth of one per cent. on all General Mortgage Bonds outstanding, and, prior to such date, such contingent interest shall only be paid in amounts equal to one-fourth of one per cent., or multiples thereof,

smaller fractional amounts being carried forward and added to that portion of the Available Net Income for the next succeeding Income Period required to be applied to the payment of contingent interest on the General Mortgage Bonds. Interest on the Fifty-Year Mortgage Bonds and Gary Bonds shall be required to be paid prior to the maturity thereof only if the amount of Available Net Income applicable to the payment of such interest in any Income Period shall be equal to interest at the rate of one-four of one per cent. on all such Bonds outstanding, and, prior to such date, such interest shall only be paid in amounts equal to one-fourth of one per cent., or multiples thereof, smaller fractional amounts being carried forward and added to that portion of the Available Net Income for the next succeeding Income Period required to be applied to the payment of contingent interest on such Bonds.

V.

1. The General Mortgage, the First and Refunding Mortgage, the Fifty Year Mortgage, the Gary Mortgage, the Milwaukee & Northern First Mortgage and the Milwaukee & Northern Consolidated Mortgage, respectively, shall each be modified to provide substantially as follows:

(a) All defaults, if any, in the performance or observance of the covenants contained in such mortgages, which shall have occurred on or before June 30, 1935, shall be waived, and the Reorganized Company shall not be obligated thereafter to remedy any such defaults, including replacement of equipment retired on or before June 30, 1935.

(b) In performance of any covenant or obligation of the Reorganized Company, or of the respective mortgagor company, as the case may be, contained in such mortgages, with respect to the maintenance of equipment under such mortgages, or the replacement thereunder of equipment worn out or destroyed, equipment may be utilized which is subject to equipment obligations in a principal amount not exceeding 80% of the original cost of the equipment covered thereby. In the case of equipment for properties covered by the lien of more than one mortgage, such equipment shall be subject to the liens of such mortgages with the same priority of lien under such respective mortgages as such properties.

(c) The Reorganized Company, or the respective mortgagor company, as the case may be, shall be entitled, notwithstanding any provision in such respective mortgages, to obtain the release from the lien of such respective mortgages of any part of the lines of railroad or other property subject thereto in connection with any arrangement for the unification of the operations of any part of the lines of railroad of the Reorganized Company, or any such mortgagor company, with those of any other railroad company or companies, provided that the rights and interests obtained by the Reorganized Company, or any such mortgagor company, in connection with any such unification arrangement, shall be subjected to the lien of such respective mortgages with the same priority of lien under such respective mortgages as the lines of railroad or other property so released;

(d) Any lines of railroad or other property, subject to the lien of any such mortgages, and heretofore abandoned by the Railroad Company, or the respective mortgagor company, or hereafter abandoned by the Reorganized Company or any such mortgagor company, pursuant to authority of the Interstate Commerce Commission (or other analogous Federal authority at the time having jurisdiction in the premises), whether heretofore or hereafter granted, may, notwithstanding any provision in such respective mortgages, be released from the lien of the respective mortgages without the sale or contracting for sale of such lines of railroad or other property so abandoned, or the exchange or contracting for exchange of such lines of railroad or other property for other property, or the substitution of other property for such lines of railroad or other property so abandoned; provided, however, that in any such case any consideration received for any such lines of railroad or other property so abandoned, whether before or after such release, shall be deposited with the trustee or trustees of the senior mortgage from the lien of which such lines of railroad or other property are so released, or shall be subjected to the lien of the mortgage or mortgages to which such lines of railroad or other property so released was subject in the same order of priority as such lines of railroad or other property so released.

2. The General Mortgage, the First and Refunding Mortgage and the Fifty Year Mortgage, respectively, shall each be further modified to provide substantially as follows:

(a) The Reorganized Company shall covenant that its annual charges for depreciation in respect of equipment subject to the lien of such mortgage and of any equipment or any interest therein hereafter acquired by the Reorganized Company shall be in an amount adequate, in accordance with sound accounting practice, to amortize the cost, less the estimated salvage to be recovered, of such equipment within the term of its useful life.

(b) The Reorganized Company shall covenant that no dividends shall be paid on any class or classes of its capital stock except out of net income earned subsequent to June 30, 1935 (determined in accordance with the accounting rules and regulations of the Interstate Commerce Commission, or other analogous Federal authority then having jurisdiction in the premises, at the time in force), and remaining after application of all Available Net Income as provided in Article IV hereof required to be applied prior to the payment of dividends on capital stock.

(c) The covenants or obligations of the Railroad Company, or of the mortgagor company, as the case may be, contained in such mortgages, with respect to the maintenance of equipment under such mortgages, or the replacement thereunder of equipment worn out or destroyed, shall be modified by the substitution therefor of a covenant by the Reorganized Company to maintain, subject to the lien of the respective mortgage, an amount of equipment adequate for the efficient handling of the business at the time carried by the properties covered by such mortgage.

3. The First and Refunding Mortgage shall be further modified to provide substantially as follows:

(a) After the termination of the Voting Trust provided for in Article VII hereof, no First and Refunding Bonds shall be issued pursuant to Section 2 of Article Two of the First and Refunding Mortgage to provide for, or to reimburse the Reorganized Company for, expenditures made for additions, betterments, improvements or extensions, in a princi-

pal amount exceeding 75% of the actual cost of such additions, betterments, improvements or extensions.

(b) $25,000,000, principal amount, of First and Refunding Bonds, with such interest rate, maturity and other provisions (within the limitations of the First and Refunding Mortgage) as the Board of Directors of the Reorganized Company may determine, may from time to time be authenticated and delivered into the treasury of the Reorganized Company, in respect of part of the capital surplus which will result from the reduced capitalization effected by the Plan, and may thereafter be pledged or sold for any corporate purpose upon such terms and conditions as said Board may determine, with the approval of the Interstate Commerce Commission. Such First and Refunding Bonds shall be authenticated and delivered by the Corporate Trustee under the First and Refunding Mortgage upon request of the Reorganized Company, without compliance by the Reorganized Company with the provisions of Sections 2, 3, and 4 of Article Two of the First and Refunding Mortgage relating to the purposes for which, and the restrictions and limitations upon which, First and Refunding Bonds may be issued.

(c) The Trustees under the First and Refunding Mortgage shall be authorized and directed to accept the provisions of the Plan with respect to any securities pledged thereunder, and to release and surrender such securities in exchange for the new securities issued, or for the existing securities modified and redelivered, pursuant to the Plan.

4. The Fifty Year Mortgage shall be further modified to provide substantially as follows:

(a) Article Five of the Fifty Year Mortgage (providing for the present Sinking Fund applicable to the Fifty Year Mortgage Bonds) shall be canceled.

(b) The Trustees under the Fifty Year Mortgage shall be authorized and directed to accept the provisions of the Plan with respect to any securities pledged thereunder subject to the First and Refunding Mortgage, and to consent to the release and surrender by the Trustees of the First and Refunding Mortgage of such securities in exchange for the new securities issued, or for the existing securities modified and redelivered, pursuant to the Plan.

5. The modifications of the respective mortgages provided to be made in this Article V shall be made by the execution and delivery of supplemental indentures to the respective mortgages. In addition to such modifications hereinabove expressly provided for, such supplemental indentures may contain other appropriate modifications of the respective mortgages as may be necessary or proper to eliminate or modify any provisions therein inconsistent or conflicting with the terms of said mortgages as the same shall be modified pursuant to the provisions or this Article V or other provisions of the Plan, or as may result from the conversion of the Adjustment Bonds into stock pursuant to the Plan.

VI.

Arrangement With Reconstruction Finance Corporation.

The existing Reconstruction Finance Corporation loans in the total amount of $11,499,462 will be extended to July 1, 1945, with interest at the rate of 4% per annum, secured by the existing collateral now pledged therefor (the maturity of such collateral to be extended to June 1, 1958, as herein provided) and any additional collateral which may be pledged to secure any loans hereafter made by Reconstruction Finance Corporation as hereinafter provided.

Reconstruction Finance Corporation shall agree with the Reorganized Company from time to time to lend to it such additional sums as the Board of Directors of the Reorganized Company may request on or before July 1, 1940, not exceeding an aggregate of $12,000,000, to be used for general corporate purposes, upon the Reorganized Company's ten year promissory note, with interest at the rate of 4% per annum, payable semi-annually, secured by the pledge of the collateral now securing the existing Reconstruction Finance Corporation loans and additional First and Refunding Bonds of the Reorganized Company (with such interest rate, maturity and other provisions as the Board of Directors of the Reorganized Company may, subject to the limitations of the First and Refunding Mortgage, determine with the approval of the Reconstruction Finance Corporation) at a rate of not to exceed $..... principal amount, of such Bonds for each $1,000, principal amount, of such additional loan.

Reconstruction Finance Corporation shall also agree with the Reorganized Company from time to time to purchase from it, at their principal amount and accrued interest, such principal amount of equipment obligations as the Board of Directors of the Reorganized Company may request on or before July 1, 1940, not exceeding an aggregate of $12,000,000, principal amount, to provide for 80% of the cost of new equipment upon which such obligations shall be issued. Such equipment obligations shall mature in 15 equal annual instalments and shall bear interest at the rate of 4% per annum payable semi-annually.

VII.

Voting Trust.

For the protection of the holders of General Mortgage Bonds, Fifty-Year Mortgage Bonds and Gary Bonds during the period in which interest upon such Bonds is in whole or in part payable out of Available Net Income, all of the Preferred Stock and Common Stock of the Reorganized Company shall be placed in a Voting Trust under which Messrs. _____, _____, _____ and _____ have agreed to act as Voting Trustees pursuant to a Voting Trust Agreement which shall be acceptable to such persons, the Interstate Commerce Commission and the Court. The agreement of such persons to act as such Voting Trustees is subject to (a) findings by the Interstate Commerce Commission that the Plan is equitable, will not discriminate unfairly in favor of any class of creditors, or stockholders, will be financially advisable, will meet with the requirements of subdivision (g) of Section 77 of the Bankruptcy Act, and will be compatible with the public interest (b) final approval of the Plan by the Interstate Commerce Commission after acceptance by such amount of creditors or security holders affected by the Plan as shall be sufficient under said Section 77 to make the Plan binding upon all classes of creditors or security holders affected by the Plan as hereinafter in Articles IX and X provided, and (c) final confirmation of the Plan by the Court. Voting Trust Certificates shall be delivered in respect of all Preferred Stock and Common Stock deposited under the Voting Trust Agreement. Such Voting Trust shall continue until ten

years from the date the Plan is finally confirmed by the Court, or until such earlier time as all accumulated interest on the General Mortgage Bonds, the Fifty-Year Mortgage Bonds and the Gary Bonds shall have been paid in full and the amounts set aside for the Sinking Fund provided for in Clause (e) of Article IV hereof shall have aggregated $250,000 for six consecutive Income Periods. It is the intention of this provision that the properties of the Reorganized Company shall during such period be managed by a board of directors, at least a majority of which shall be representatives of holders of General Mortgage Bonds, Fifty-Year Mortgage Bonds and Gary Bonds. The Voting Trust Agreement shall provide that if any vacancy shall occur among the Voting Trustees, such vacancy shall be filled by a majority of the remaining Voting Trustees. The Voting Trust Agreement shall also provide that, so long as any part of the loans of Reconstruction Finance Corporation to the Reorganized Company shall be outstanding and unpaid, the Voting Trustees shall elect to the Board of Directors of the Reorganized Company a person designated or nominated for that purpose by Reconstruction Finance Corporation. Action of a majority of the persons at the time acting as Voting Trustees, at a meeting or in writing without a meeting, shall constitute the action of the Voting Trustees under the Voting Trust Agreement and under the Plan.

To insure the conservation of the Reorganized Company's resources and the application of Available Net Income as herein provided, and to protect holders of General Mortgage Bonds, Fifty-Year Mortgage Bonds and Gary Bonds in respect of the Contingency Reserve Fund and the Capital Fund, the Reorganized Company shall, by by-law or otherwise, create a Finance Committee of not less than three or more than five members of its Board of Directors, which shall have supervision over all financial matters, including the annual budget of capital expenditures and all other expenditures of the Reorganized Company's funds; and the Reorganized Company shall covenant, for the benefit of the General Mortgage Bonds until January 1, 1945, or such earlier time as all interest on such Bonds becomes fixed, and for the benefit of the Fifty-Year Mortgage Bonds and the Gary Bonds until the termination of the Voting Trust, to make only such expenditures as shall be authorized by said Finance Committee (exclusive

of emergency expenditures and of capital items not exceeding $25,000 for any item and not exceeding $500,000 in the aggregate in any year).

VIII.

Description of New Preferred and Common Stock.

The authorized amount of Preferred Stock shall consist of 4,000,000 shares of the par value of $100 each. Holders of the Preferred Stock shall be entitled in any fiscal year of the Reorganized Company to receive dividends at the rate of five per cent per annum upon the par value thereof, but no more, before any dividends shall be paid in such fiscal year, or declared or set apart for payment in such fiscal year, upon the Common Stock; but no part of such dividends shall be cumulative whether or not in any fiscal year there shall be net income available for payment of such dividends. After full dividends on the Preferred Stock at the rate of five per cent per annum upon the par value thereof shall have been paid in any fiscal year, or declared and set apart for payment in such fiscal year, holders of the Common Stock shall be entitled to receive all further dividends which may be paid in such fiscal year, or declared or set apart for payment in such fiscal year, up to dividends at the rate of five per cent per annum upon the par value thereof, but no more, before any further dividends shall be paid in such fiscal year, or declared or set apart for payment in such fiscal year, upon the Preferred Stock; but no part of such dividends shall be cumulative whether or not in any fiscal year there shall be net income available for payment of such dividends. All dividends in excess of dividends at the rate of five per cent per annum upon the par value thereof upon the Preferred Stock and the Common Stock, as aforesaid, which may be paid in any fiscal year, or declared or set apart for payment in any fiscal year, shall be paid, or declared or set apart for payment, equally in amount per share upon both the Preferred Stock and the Common Stock. Dividends on both the Preferred Stock and the Common Stock shall be payable only out of the net income of the Reorganized Company earned subsequent to June 30, 1935 as determined by the Board of Directors (subject to the prior payment of amounts payable out of Available Net Income as in

Article IV provided and subject to the provisions of the covenants contained in certain mortgages as in Clause 2 (b) of Article V provided), and only as and when declared by the Board of Directors, but may in any fiscal year be paid out of such net income whether arising during the same fiscal year or accrued during prior fiscal years and may be paid annually, semi-annually or quarterly.

In the event of the dissolution, winding up, or liquidation of the Reorganized Company, the holders of the Preferred Stock shall be entitled to receive out of the assets of the Reorganized Company the par value of their shares before any distribution shall be made to the holders of the Common stock but shall not be entitled to share in any assets of the Reorganized Company thereupon remaining. The foregoing provisions shall not be deemed to require the distribution of assets among the stockholders in the event of a consolidation, merger, lease or sale which does not in fact result in the liquidation or winding up of the enterprise, if the terms of such consolidation, merger, lease or sale make other provision for the preferred Stock and are consented to by the holders of a majority in amount of each class of stock as hereinafter provided.

The Preferred Stock and the Common Stock shall have equal voting power per share and in addition provision is to be made that (a) no change shall be made in the articles of association of the Reorganized Company, (b) the Reorganized Company shall not dispose (by sale, consolidation, merger or lease or otherwise) of its properties as a whole, or substantially as a whole, (c) no mortgage on its lines of railroad to secure additional indebtedness (except Bonds issued under the First and Refunding Mortgage or purchase money mortgages solely upon additional properties hereafter acquired) shall be created, (d) the authorized amount of Preferred Stock shall not be increased and (e) no additional stock ranking either as to dividends or assets on a parity with or in priority over the Preferred Stock shall be created without, in each such case, the consent of the holders of a majority in amount of the outstanding Preferred Stock and of the holders of a majority in amount of the outstanding Common Stock, voting separately. During the existence of the Voting Trust hereinabove provided for in Article VII hereof, similar consent of holders of like amounts of the respective classes of Voting Trust Certificates shall also be

necessary before the Voting Trustees may vote the stock held under the Voting Trust Agreement for any of the foregoing purposes, or in lieu of obtaining the consent of the holders of such Voting Trust Certificates, the Voting Trustees may give proxies to the holders of the Voting Trust Certificates to vote upon any of the foregoing matters in respect of the number of shares represented by their respective Voting Trust Certificates.

Of the authorized issue of new Preferred Stock, $230,420,853, par value, is to be offered to holders of Adjustment Bonds under the Plan, $109,395,096, par value, will be reserved for conversion of Fifty Year Mortgage Bonds and Gary Bonds, and the remainder of the authorized issue will be reserved for future issue for corporate purposes of the Reorganized Company.

The authorized amount of Common Stock shall consist of 2,000,000 shares, of the par value of $25 per share, of which 1,584,426¼ shares are to be offered to holders of Preferred Stock and Common Stock of the Railroad Company under the Plan, and the remainder will be reserved for future issue for corporate purposes of the Reorganized Company.

IX.

Method of Participation in and Consummation of the Plan.

No holder of any security of the Railroad Company affected by the Plan shall be requested to accept the Plan until after a public hearing upon the Plan, held as provided in Section 77 of the Bankruptcy Act, and a report of the Interstate Commerce Commission recommending the Plan (in its present form or as it may be modified as hereinafter provided) and stating that such Plan, as recommended, will, in its opinion, be equitable, will not discriminate unfairly in favor of any class of creditors or stockholders, will be financially advisable, will meet with the requirements of subdivision (g) of said Section 77, and will be compatible with the public interest. If and when the Interstate Commerce Commission shall so recommend the Plan (including any modification thereof), such Plan shall be submitted to the security holders affected thereby in such manner as the Interstate Commerce Commission may approve, and such security holders shall be given an opportunity to accept such Plan, either by deposit of se-

curities with depositaries designated for the purpose or otherwise as may be approved or directed by the Interstate Commerce Commission.

The Plan shall not be declared operative or carried out until finally approved by the Interstate Commerce Commission and confirmed by the Court after acceptance by Reconstruction Finance Corporation and by the holders of such amount of each class or classes of securities or claims affected by the Plan as shall be sufficient, under the provisions of the Bankruptcy Act as now existing or as it may hereafter be amended, to make the Plan binding upon the holders of all classes of securities or claims affected by the Plan without payment of cash to any of such classes or providing any means for the realization by such classes of the value of their securities, liens or claims other than as expressly set forth in Article X of the Plan.

The Board of Directors of the Railroad Company may, whether before or after its acceptance by holders of securities, modify the Plan or adopt a substitute plan, in accordance with, and subject to the provisions of, Section 77 of the Bankruptcy Act; and the term Plan as used herein shall be deemed to include any such modification or substituted plan.

All acceptances or assents to the Plan shall be subject to the condition that the Plan shall have been finally confirmed by the Court pursuant to Section 77 of the Bankruptcy Act prior to December 31, 1935, or such later date as may, with the approval of the Interstate Commerce Commission, be fixed by agreement between (1) the Railroad Company, (2) Reconstruction Finance Corporation and (3) the persons named to constitute the Voting Trustees.

It is contemplated that the Plan will be carried out under the provisions of Section 77 of the Bankruptcy Act by the execution of supplemental indentures to the several mortgages, the appropriate stamping of bonds or the delivery of new bonds or the substitution of new coupons representing contingent interest and, in respect of stock, by taking the necessary corporate action to change the existing stocks and to authorize the issuance of the new stocks contemplated by the Plan. The method of carrying out the Plan shall, however, be in the discretion of the Board of Directors of the Railroad Company subject to the approval of a majority of the persons named to be

Voting Trustees in Article VII heroef, and it may be carried out, subject to the provisions of said Section 77, by the transfer of the properties of the Railroad Company to a new corporation organized for the purpose, the execution of new mortgages and the issue of new bonds. The Board of Directors of the Railroad Company shall also have power, subject to the provisions of the Plan and subject to the approvel of a majority of such Voting Trustees and their counsel, to determine the form and provisions of all indentures, supplemental indentures, bonds, coupons, stamps, voting trust agreements, voting trust certificates, stock certificates, acceptances, assents and all other instruments in connection with carrying out the Plan.

Upon any sale of the property of the Railroad Company, whether under the provisions of this Article IX or of Article X hereof, the Board of Directors of the Railroad Company may act as a purchasing committee to acquire such property at such sale for the purpose of carrying out the Plan; and, upon any such sale, if the property is sold free of any liens, there shall be credited upon the purchase price of the property sold, or charged against the proceeds of the sale, the distributive value of all bonds or claims constituting such lien upon the property sold or entitled to share in the proceeds of such sale prior to the payment of any amounts to the stockholders of the Railroad Company.

Unless otherwise provided in Section 77 of the Bankruptcy Act or in any order or orders of the Court or the Interstate Commerce Commission, whenever notice shall be required or permitted to be given under or pursuant to the Plan, such notice shall be given by publishing a copy of such notice once in each week for at least two successive weeks in one newspaper published and of general circulation in the Borough of Manhattan, the City and State of New York, and in one newspaper published and of general circulation in the City of Chicago, State of Illinois, and also (1) in case of notices to security holders or creditors who shall have accepted the Plan, by mailing such notice, postage prepaid, to the addresses of such security holders or creditors set forth in the acceptances signed by them; and (2) in case of notices to security holders or creditors who shall not have accepted the Plan, by mailing such notice, postage prepaid, to such security holders or creditors whose names and addresses appear on the books of the Railroad Company.

X.

Provision for Dissenting Stockholders.

If the holders of more than one-third of the shares of either the Preferred Stock or the Common Stock of the Railroad Company shall not have accepted the Plan within the period hereinabove specified and if the Plan shall not otherwise become binding upon all holders of Preferred Stock and Common Stock of the Railroad Company under the provisions of the Bankruptcy Act as now existing or as it may hereafter be amended, such holders not so accepting the Plan or not so becoming bound by the Plan shall be given protection for the realization by them of the value of their equity, if any, in the property of the Railroad Company by a sale, pursuant to Section 77 of the Bankruptcy Act, of the property of the Railroad Company.

XI.

Provision for Other Claims.

The following claims are not affected by the Plan: (a) current liabilities of the Railroad Company incurred in the ordinary conduct of its business prior to the institution of the reorganization proceedings, including claims for personal injury and property damage, (b) current liabilities and obligations of the Railroad Company and of any trustee or trustees of the estate incurred during the reorganization proceedings, and (c) all other claims, liabilities or obligations for which specific provision is not made in the Plan (including therein the liabilities or obligations of the Railroad Company under guaranties of bonds of other railroad or terminal companies as set forth in a footnote in Article I hereof). To the extent that such claims, liabilities or obligations are not paid by the Railroad Company or any trustee or trustees of the estate pursuant to order of the Court in the reorganization proceedings, they are to be paid in cash by the Reorganized Company upon the consummation of the Plan, or assumed by the Reorganized Company. All such claims, liabilities and obligations, including any claims arising from the disaffirmance of executory leases or other contracts by the Railroad Company or any trustee or trustees of the estate in the reorganiza-

tion proceedings pursuant to order of the Court, in respect of which claims are filed or evidenced in accordance with orders of the Court, may be adjusted or compromised and dealt with or paid or discharged by the Reorganized Company, all as may be determined by the Board of Directors of the Reorganized Company and approved by the Court.

The Reorganized Company shall be deemed to have assumed such of the contracts of the Railroad Company which are executory in whole or in part, including any executory leases and liabilities under guaranties, as shall have been affirmed by the Railroad Company or any trustee or trustees of the estate in the reorganization proceedings prior to the date of confirmation of the Plan, and also any executory contracts made by the Railroad Company or any trustee or trustees of the estate in the reorganization proceedings which, by their terms, do not terminate at the conclusion of the reorganization proceedings.

XII.

Expenses of the Plan.

All expenses of carrying out the Plan, and all costs of administration and other allowances made by the Court, shall be paid by the Railroad Company or by the Reorganized Company subject to the provisions of Section 77 of the Bankruptcy Act and shall constitute a charge upon the properties of the Railroad Company and the Reorganized Company as a cost of administration prior in lien to all securities affected by the Plan. There shall be included in such expenses such reasonable compensation for services rendered and reimbursement for actual expenses incurred in connection with the proceeding and the Plan by parties in interest, committee or other representatives of creditors or stockholders, and the attorneys or agents of any thereof (including the Railroad Company), as may be approved by the Interstate Commerce Commission and the Court pursuant to the Bankruptcy Act.

XIII.

Statements Contained in the Plan.

All statements and figures herein contained with respect to the capitalization of the Railroad Company have been taken from the books or records of the Railroad Company, but no estimate, statement, explanation or suggestion contained in the Plan or in any circular issued, or which may hereafter be issued, by the Railroad Company, or by any of its officers, is intended or is to be accepted as a warranty by the Railroad Company, or any of its directors or officers.

July 1, 1935.

Entered June 29, 1935.

And afterwards, to wit, on the 29th day of June, A. D. 1935, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

Order No. 1.

IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—60463) • •

ORDER.

Upon due consideration of the petition of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the above named Debtor, verified June 28th, 1935, and filed herein this day, stating that such Debtor is unable to meet its debts as they mature and that it desires to effect a plan of reorganization pursuant to Section 77 of the Act of Congress entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and the Acts amendatory thereof and supplementary thereto; and the Court being satisfied that such petition complies with said Section 77 and has been filed in good faith, it is ordered:

(1) That said petition be, and it is hereby approved as properly filed under Section 77 of said Act.

(2) That the Debtor be, and it is hereby, authorized

and directed, pending further order of this Court to continue in possession and control of its properties, assets and business, and to run, manage, maintain, operate and keep in proper condition and repair the railroad and properties of the Debtor, wherever situated, whether in this State, Judicial Circuit, or elsewhere; to manage, operate and conduct its business, and to this end to exercise its authority, rights and franchises and to discharge its public duties; to employ or discharge and to fix the compensation of all its officers, counsel, attorneys, managers, superintendents, agents and employees (provided, however, that the compensation of all officers of the Company shall continue at the present rates until further order of this Court and that the attorney or counsel of record for the Debtor in this proceedings or the counsel retained by the Debtor in connection with the preparation and consummation of its Plan of Reorganization shall be paid only such reasonable compensation for services rendered and reimbursement for expenses hereafter incurred as shall hereafter be allowed by this Court pursuant to said Section 77); to collect and receive the income, rents, revenues, tolls, issues and profits, accrued or to accrue, from its railroad and properties; to collect all its outstanding accounts, and all dividends and interest on securities belonging to it; to sell, convey, or lease property, real or personal, not needed in the operation of its railroad, and to exercise such rights of sale, conveyance, exchange and release as are reserved to, or available to, it under its outstanding deeds of trust, mortgages, trust indentures, and similar instruments, and to use the proceeds of sale of released property as provided in such instruments, all in the same manner that it would be entitled to do in its own right; and, to the extent necessary to protect, preserve or benefit its railroad or properties or business, to make and pay for additions and betterments thereto and thereof; to perform its existing contracts incurred in the regular course of business to the extent that performance thereof may seem desirable, but such performance shall not constitute an affirmance of said contracts or any thereof; to enter into and perform other contracts in the regular course of the conduct of its business; all to the end that the business of the Debtor may be continued, operated and managed according to the customary and usual manner of conducting its business; all of the fore-

going powers to be exercised by Debtor according to law, and subject to such supervision and control by the Court as the Court may exercise by further orders entered herein;

(3) That the Debtor is authorized in its discretion, from time to time until further order of this Court, out of funds now or hereafter coming into its hands, to pay:

(a) All taxes and assessments due or to become due upon the properties, income, franchises or business of the Debtor;

(b) All necessary current expenses in operating the railroad, preserving the assets and conducting the business of the Debtor, including among other expenses, the wages, salaries and compensation of all officers, attorneys, counsel, managers, superintendents, agents and employees retained by the Debtor (subject, however, to the provisions of paragraph (2) of this order with respect to the payment of compensation of any such officers, attorneys or counsel); the charges for freight, ticket, switching, car mileage, per diem, switching reclaim, division and all other interline accounts and balances; the consideration of adjustment or compromise of claims for loss, damage or delay to freight, for overcharges and for reparation; joint facility and equipment rental (subject, however, to the limitation hereinafter provided with respect to the payment of principal or interest of equipment obligations covering equipment leased by the Debtor) and expenses and accounts for materials and supplies; also, all sums now due or which may hereafter become due to other persons or corporations for car or equipment repairs or for the occupation or use, jointly or otherwise, of buildings, depots, terminals, tracks, side tracks, yards, warehouses, shops, bridges, interlocking plants and other railroad facilities and such sums as may be necessary to comply with the obligations of the Debtor under contracts or leases by virtue of which such occupation or use may now or hereafter be enjoyed, but such payments shall not constitute affirmations of such contracts or leases, or any of them;

(c) The following claims incurred by the Debtor within six months preceding the date of this order, to wit: wages, salaries, fees and other charges due and payable for services rendered to the Debtor in the

usual and customary operation of its properties and the conduct of its current business, unpaid material and supply accounts incurred in the operation of said properties, unpaid and outstanding pay checks and wage checks representing labor actually performed for the Debtor, and unpaid ticket, traffic, car mileage and car per diem balances, interline accounts; freight and overcharge claims and accounts for car and equipment repairs incurred by the Debtor;

(d) Claims for or arising out of loss, damage or delay to freight or baggage; overcharges; reparation; adjustments of or refunds for freight or other charges on shipments, including shipments in connection with which there are charges for transit or storage privileges; freight, ticket, switching, car mileage, per diem, switching reclaim and all other interline accounts and balances; rental of equipment or rental of or expense arising from use or operation of or over joint or other facilities; outstanding checks for wages, fees or services; claims for personal injuries to employees which are preferred under the Acts of Congress relating to bankruptcy; and other claims, charges or adjustments of similar character between Debtor and other carriers in the conduct of their joint business, between Debtor and its patrons and between Debtor and its employees; all regardless of when accrued; and the Debtor is hereby authorized, in its discretion, pending further order of this Court, to pay, adjust, compromise, make advances for, or reimburse others for so adjusting, compromising, making advances for, or paying on the Debtor's behalf any of the foregoing claims;

(e) The cost of maintaining the corporate existence of the Debtor, including corporate, franchise, stamp and similar taxes, fees and expenses, and fees and expenses in connection with directors meetings, such office rent as may be required and the necessary expense of keeping and preserving its corporate records, of maintaining transfer offices and agents, of registering and transferring its securities and of paying the proper charges and expenses of the trustees under indentures or mortgages pursuant to which securities of the Debtor have been issued;

(f) Such allowances as heretofore have been allowed and paid by the Debtor to superannuated em-

ployees and employees who have become disabled or incapacitated in the Debtor's service; and

(g) The expense of printing pleadings, motions, petitions, orders and other documents now on file or hereafter filed in this case, in sufficient quantities to provide copies thereof for the use of the Court, the Interstate Commerce Commission, the Debtor, parties to the cause, and others who may have a substantial interest therein; such expense to be taxed as costs in this case;

Until the further order of this Court, no payment shall be made by the Debtor upon or in respect of the principal of or interest on any of its funded debt, including principal of or interest on any equipment obligations constituting a lien upon equipment leased by the Debtor, and including therein, without limitation, all obligations representing funded debt of the Debtor listed in Article I of the Plan of Reorganization dated July 1, 1935, of the Debtor, annexed to said petition of the Debtor and marked Exhibit A.

(4) That the Debtor shall have the power to elect whether to adopt or continue in force, or to refuse to adopt or continue in force or to disaffirm or reject, any lease, trackage, terminal, crossing or operating agreement, or other contract not fully performed to which it is a party or under which it may be obligated; and the Debtor is hereby allowed a period of six months (or such further period as this Court may allow) from the date of the entry of this order to make such election. Any such election may be made from time to time, and shall be made by instrument in writing signed by the duly authorized officer or officers of the Debtor and delivered, or mailed by registered mail, postage prepaid, addressed to, the other party or parties to said lease, agreement or contract; and any such election shall be effective when a copy of such instrument, together with proof of delivery or mailing of a copy or copies thereof as aforesaid to the other party or parties to such lease, agreement or contract shall be filed of record in this proceeding. No conduct or user of rights by the Debtor or payments made by the Debtor as rent or otherwise, or accepted by it as rents or otherwise, or any other acts or omissions by the Debtor during said period (or such other period as this Court may allow) except an instrument filed and delivered or mailed as aforesaid expressly

adopting any such lease, agreement or contract shall be deemed to preclude or conclude the Deb or in respect of such election or be deemed to constitute an election to adopt or continue in force any such lease, agreement or contract.

(5) That pending further order of the Court in the premises the Debtor is authorized and empowered to institute or prosecute in any court or before any tribunal of competent jurisdiction all such suits and proceedings as may be necessary in its judgment for the recovery or proper protection of its property or rights, and to make settlement of any thereof; and likewise to defend or to liquidate by written agreement or consent judgment, decree, order or award any claim, demand or cause of action, whether or not suit or other proceeding to enforce the same has been or shall be brought in any court or before any officer, department, commission, board or tribunal, but no payments shall be made by the Debtor in respect of any such claims accruing prior to the date of this order, or in respect of any actions, proceedings or suits on such claims, without further order or direction of this Court, except such as may be permitted by this or other orders hereafter entered herein, and such as constitute preferred claims under the Acts of Congress relating to bankruptcy; and no action taken by the Debtor in defense or settlement of such claims, actions, proceedings, or suits shall have the effect of establishing any claim upon, or right in, the property or funds in the possession of the Debtor that otherwise would not exist;

(6) That the Debtor shall close its present books of account at midnight on the 30th day of June, 1935. The Debtor shall open new books of account at the beginning of the day of July 1st, 1935, and cause to be kept therein due and proper accounts of the earnings, expenses, receipts and disbursements of the Debtor, and shall preserve proper vouchers or receipts for all payments made on account thereof, and shall deposit the moneys coming into its hands in such of the banks in which funds of the Debtor are presently deposited as shall be selected by the Debtor, or in such other bank or banks as shall be selected by it and approved by this Court:

(7) That, not later than the 31st day of August, 1935, the Debtor shall file with the Clerk of this Court a statement of the assets and liabilities of the Debtor as of the close of business on the 30th day of June, 1935, and, within forty-five days after the close of each calendar month there-

after, shall file with said Clerk a statement of the assets and liabilities of the Debtor as of the close of business on the last day of the second preceding calendar month, together with a summary statement of the revenues and expenses of the Debtor for the second preceding calendar month. All such statements shall be certified as correct by the chief accounting officer of the Debtor;

(8) That the Debtor is hereby directed to prepare and file with the Clerk of this Court on or before 30 days from the date of the entry of this order, in lieu of the schedules required by Section 7 of said Bankruptcy Act, a balance sheet of the Debtor as of the latest practicable date, together with supporting schedules, in the form of annual statements made to the Interstate Commerce Commission, and such other information as this Court may hereafter direct as necessary to disclose the conduct of the Debtor's affairs and the fairness of any plan of reorganization of the Debtor proposed under Section 77 of said Bankruptcy Act;

(9) That the Debtor is hereby authorized and directed, within 15 days from the date of the entry of this order (unless a later date be directed by this Court, upon causes shown) to prepare (a) a list of all known bondholders and creditors of, or claimants against, the Debtor, or its property, and the amounts and character of their debts, claims and securities, and the last known post-office address or place of business of each creditor or claimant and (b) a list of the stockholders of the Debtor, with the last known post-office address or place of business of each. The contents of such lists shall not constitute admissions by the Debtor or any trustees of the estate in this proceeding. Such lists shall be open to the inspection of any creditor or stockholder of, or claimant against, the Debtor, during reasonable business hours, upon application to the Debtor or any such trustees;

(10) That all persons, firms and corporations, whatsoever and wheresoever situated, located or domiciled, be and they are hereby restrained and enjoined from interfering with, attaching, garnisheeing, levying upon, or enforcing liens upon, or in any manner whatsoever disturbing any portion of the assets, goods, money, railroads, properties, or premises belonging to, or in the possession of the Debtor, or from taking possession of, or in any way interfering with the same, or any part thereof, or from interfering in any manner with the operation of its railroad or properties or the carrying on of its business by the Debtor

under the orders of this Court, or from bringing any new suits, actions or proceedings on causes of action accruing prior to this date in or before any Court, Commission or tribunal from which an appeal, or proceeding to review, can be taken only upon the filing of an appeal bond as a jurisdictional or mandatory requirement;

(11) That all persons and corporations holding collateral heretofore pledged by the Debtor as security for its notes or obligations be, and each of them is, hereby restrained and enjoined from selling, converting or otherwise disposing of such collateral, or any part thereof, until further order of this Court.

This Court reserves full right and jurisdiction to enter at any time further orders in the premises as the Court may deem proper, including the right to amend, extend, limit, modify or otherwise change or rescind the present order.

Enter:

James H. Wilkerson,
District Judge.

Dated:
June 29, 1935.

776 And on, to wit, the 6th day of July, A. D. 1935, came the Debtor by its attorneys and filed in the Clerk's office of said Court its certain Petition re claims and division of creditors and stockholders into classes in words and figures following, to wit: Filed July 6, 1935.

777 Petition for Order No. 2.

IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—60463) * *

PETITION.

The petition of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a Wisconsin corporation, the Debtor herein, respectfully shows to the Court as follows:

First: The nature of the claims and interests of the known creditors and stockholders of the Debtor is as follows:

1. $2,117,000, principal amount, of Milwaukee & North-

ern Railroad Company First Mortgage 4½% Bonds, issued under the Indenture, dated June 10, 1880, of Milwaukee & Northern Railroad Company to Jesse Hoyt and Allen S. Apgar, as Trustees, under which City Bank Farmers Trust Company is now Corporate Trustee, (hereinafter sometimes called the Milwaukee & Northern First Mortgage). Said Mortgage constitutes a lien upon certain lines of railroad and other properties in the State of Wisconsin, including approximately 125.74 miles of railroad, and all of the properties subject thereto have heretofore been acquired by the Debtor, subject to said Mortgage. Said Bonds matured June 1, 1934 and, pursuant to a Plan of Extension dated March 14, 1934, payment of principal of and interest on $2,078,000, principal amount, of said Bonds has been assumed by the Debtor, and extended to June 1, 1939. (In addition, $38,000, principal amount of said Bonds are pledged under the Debtor's First and Refunding Mortgage hereinafter described).

2. $5,072,000, principal amount, of Milwaukee & Northern Railroad Company Consolidated Mortgage 4½% Bonds, issued under the Indenture dated February 11, 1884, of Milwaukee & Northern Railroad Company to Samuel N. Hoyt and Allen S. Apgar, as Trustees under which City Bank Farmers Trust Company is now Corporate Trustee, (hereinafter sometimes called the Milwaukee & Northern Consolidated Mortgage). Said Mortgage constitutes a lien upon certain lines of railroad and other properties in the States of Michigan and Wisconsin, including approximately 392.30 miles of railroad, and all of the properties subject thereto have heretofore been acquired by the Debtor, subject to said Mortgage. Said Bonds matured June 1, 1934 and, pursuant to a Plan of Extension dated March 14, 1934, payment of principal of and interest on $4,849,000, principal amount of said Bonds has been assumed by the Debtor and extended to June 1, 1939. (In addition, $20,000, principal amount of said Bonds are pledged under the Debtor's First and Refunding Mortgage hereinafter described).

778 3. $3,000,000, principal amount, of Chicago, Milwaukee and Gary Railway Company First Mortgage Five Per Cent. Forty-Year Bonds, due April 1, 1948, issued under the Deed of Trust dated April 1, 1908, of Chicago, Milwaukee and Gary Railway Company to Illinois State Trust Company and St. Louis Union Trust Company, as Trustees (hereinafter sometimes called the Gary Mortgage). Said Mortgage constitutes a lien upon cer-

tain lines of railroad in the State of Illinois, including approximately 82.85 miles of railroad, and all the properties subject thereto except the abandoned line from Camp Grant to Kirkland, Illinois have heretofore been acquired by the Debtor, subject to said Mortgage, and payment of principal of and interest on said Bonds has been assumed by the Debtor. (In addition $2,700,000, principal amount of said Bonds are pledged under the Debtor's First and Refunding Mortgage hereinafter described, but have not been assumed by the Debtor).

4. $150,000,000, principal amount of Chicago, Milwaukee and St. Paul Railway Company General Mortgage Bonds due May 1, 1989, of which $138,788,000, principal amount, thereof are outstanding in the hands of the public, and $11,212,000, principal amount, thereof are pledged with Reconstruction Finance Corporation to secure notes executed by the Debtor to said Corporation as hereinafter described. Said Bonds are issued in series, bearing interest at rates and outstanding or pledged in principal amounts as follows:

Series A, 4%	$48,241,000
Series B, 3½%	8,950,000
Series C, 4½%	42,597,000
Series E, 4½%	24,000,000
Series F, 4¾%	15,000,000
Series G, 5% (pledged)	11,212,000

Payment of principal and interest of said Bonds has been assumed by the Debtor. Said Bonds of Series E, Series F and Series G bear the endorsed assumption of payment of principal and interest thereof by the Debtor and also provide that the tax covenant therein contained is canceled and that the Bonds are redeemable as therein set forth. All of said General Mortgage Bonds are issued under the General Mortgage dated May 1, 1889, of Chicago, Milwaukee and St. Paul Railway Company to United States Trust Company of New York, as Trustee, (hereinafter sometimes called the General Mortgage), which mortgage constitutes a lien upon approximately 6,055.46 miles of road, including practically all the principal lines of the Debtor between Chicago and the Missouri River and on terminal properties in various cities and on equipment owned by the Debtor appurtenant to such lines subject to the lien of certain leases and equipment trusts. All of the lines of rail-

road and property covered by the General Mortgage have heretofore been acquired by the Debtor, subject to the lien thereof.

5. $8,923,000, principal amount, of the Debtor's First and Refunding Mortgage 6% Bonds, Series A, due June 1, 1943, issued under the First and Refunding Mortgage dated as of February 2, 1925, of the Debtor to United States Mortgage and Trust Company and Calvert Brewer, as Trustees, under which Chemical Bank & Trust Company and Howard B. Smith are now Trustees, (hereinafter sometimes called the First and Refunding Mortgage). Of said Bonds, $6,000,000, principal amount, thereof are pledged to secure notes to Reconstruction Finance Corporation (and, subject to the prior lien of Reconstruction Finance Corporation, to secure notes to The Railroad Credit Corporation), $2,665,000 are pledged to secure notes to the Federal Emergency Administration of Public Works, and $258,000 are pledged as addi-
779 tional security for Equipment Trust Certificates, Series M. In addition $943,000, principal amount, thereof are held in the treasury of the Debtor. Said First and Refunding Mortgage constitutes a lien upon all the lines of railroad (except 15.82 miles of road between Westby and Chaseburg, Wisconsin and 13.75 miles of road between Sunset and Cottonwood, Montana), properties and equipment of the Debtor, subject (in so far as they may respectively attach to the trust estate) to the liens of the Milwaukee & Northern First Mortgage, the Milwaukee & Northern Consolidated Mortgage, the General Mortgage, the Gary Mortgage, the First Mortgage dated December 2, 1901, made by Bellingham Bay and British Columbia Railroad Company to Mercantile Trust Company of San Francisco as Trustee, under which American Trust Company is now Corporate Trustee, and subject, as to certain equipment used on such lines of railroad, to leases and equipment trusts constitutiong liens thereon. In addition, the First and Refunding Mortgage constitutes a lien upon certain shares of stock and bonds and other obligations pledged thereunder.

6. $106,395,096, principal amount, of the Debtor's Fifty-Year Five Per Cent. Mortgage Bonds, due February 1, 1975, issued under the Mortgage and Deed of Trust dated as of February 2, 1925, of the Debtor to Guaranty Trust Company of New York and Merrel P. Callaway, as Trustees, (hereinafter sometimes called the

Fifty-Year Mortgage). Said mortgage constitutes a lien, subject to the lien of the First and Refunding Mortgage and to the prior liens to which the First and Refunding Mortgage is subject, upon all the lines of railroad, properties and equipment covered by the First and Refunding Mortgage.

7. $182,873,693, principal amount, of the Debtor's Five Per Cent. Convertible Adjustment Mortgage Bonds, due January 1, 2000, issued under the Adjustment Mortgage dated as of February 2, 1925, of the Debtor to The National City Bank of New York and William W. Hoffman, as Trustees, (hereinafter sometimes called the Adjustment Mortgage). The Adjustment Mortgage constitutes a lien subject to the lien of the Fifty-Year Mortgage and to the prior liens to which the Fifty-Year Mortgage is subject, upon all the lines of railroad, properties and equipment covered by the Fifty-Year Mortgage.

8. $1,617,000, principal amount, of Equipment Trust Certificates, Series A, bearing interest or dividends at 5% per annum, issued under Equipment Trust Agreement dated July 15, 1922, between John W. Taylor and L. K. Sillcox, Vendors, the Metropolitan Trust Company of The City of New York, Trustee, under which Manufacturers Trust Company is now Trustee, and Chicago, Milwaukee and St. Paul Railway Company, and the Lease collateral thereto, due in three annual instalments from July 15, 1935 to July 15, 1937, inclusive.

9. $3,599,000, principal amount, of Equipment Trust Certificates, Series C, bearing interest or dividends at 5½% per annum, issued under Equipment Trust Agreement dated April 1, 1923, between Andrew S. Hannum and Granville H. Davis, Vendors, Bank of North America and Trust Company, Trustee, under which The Pennsylvania Company for Insurances on Lives and Granting Annuities is now Trustee, and Chicago, Milwaukee and St. Paul Railway Company, and Lease collateral thereto, due in four annual instalments from April 1, 1935 to April 1, 1938 inclusive.

10. $3,708,000, principal amount, of Equipment Trust Certificates, Series D, bearing interest or dividends at 5% per annum, issued under Equipment Trust Agree-
780 ment dated August 1, 1925, between Andrew S. Hannum and Granville H. Davis, Vendors, Bank of North America and Trust Company, Trustee, under which The

Pennsylvania Company for Insurances on Lives and Granting Annuities is now Trustee, and H. E. Byram, Mark W. Potter and Edward J. Brundage, as Receivers of Chicago, Milwaukee and St. Paul Railway Company, and Lease collateral thereto, due in six annual instalments from August 1, 1935 to August 1, 1940, inclusive.

11. $1,521,000, principal amount, of Equipment Trust Certificates, Series E, bearing interest or dividends at 4½% per annum, issued under Equipment Trust Agreement dated July 2, 1928, between Andrew S. Hannum and Harry Wells, Vendors, Bank of North America and Trust Company, Trustee, under which The Pennsylvania Company for Insurances on Lives and Granting Annuities is now Trustee, and the Debtor, and Lease collateral thereto, due in nine annual instalments from July 1, 1935 to July 1, 1943 inclusive. Payment of principal thereof and interest or dividends thereon is guaranteed by the Debtor.

12. $2,952,000, principal amount, of Equipment Trust Certificates, Series F, bearing interest or dividends at 4½% per annum, issued under Equipment Trust Agreement dated July 2, 1928, between Andrew S. Hannum and Harry Wells, Vendors, Bank of North America and Trust Company, Trustee, under which The Pennsylvania Company for Insurances on Lives and Granting Annuities is now Trustee, and the Debtor, and Lease collateral thereto, due in nine annual instalments from July 1, 1935 to July 1, 1943, inclusive. Payment of principal thereof and interest or dividends thereon is guaranteed by the Debtor.

13. $469,000, principal amount, of Equipment Trust Certificates, Series G, bearing interest or dividends at 4½% per annum, issued under Equipment Trust Agreement dated July 2, 1928, between Andrew S. Hannum and Harry Wells, Vendors, Bank of North America and Trust Company, Trustee, under which The Pennsylvania Company for Insurances on Lives and Granting Annuities is now Trustee, and the Debtor, and Lease collateral thereto, due in seven annual instalments from July 1, 1935 to July 1, 1941 inclusive. Payment of principal thereof and interest or dividends thereon is guaranteed by the Debtor.

14. $315,000, principal amount, of Equipment Trust Certificates, Series H, bearing interest or dividends at 4½% per annum, issued under Equipment Trust Agreement dated July 2, 1928, between Andrew S. Hannum

and Harry Wells, Vendors, the Bank of North America and Trust Company, Trustee, under which The Pennsylvania Company for Insurances on Lives and Granting Annuities is now Trustee, and the Debtor, and Lease collateral thereto, due in seven annual instalments from July 1, 1935 to July 1, 1941 inclusive. Payment of principal thereof and interest or dividends thereon is guaranteed by the Debtor.

15. $5,580,000, principal amount, of Equipment Trust Certificates, Series J, bearing interest or dividends at 5% per annum, issued under Equipment Trust Agreement dated June 1, 1929, between Andrew S. Hannum and Harry Wells, Vendors, The Pennsylvania Company for Insurances on Lives and Granting Annuities, Trustee, and the Debtor, and Lease collateral thereto, due in ten annual instalments from June 1, 1935 to June 1, 1944 inclusive. Payment of principal thereof and interest or dividends thereon is guaranteed by the Debtor.

16. $1,410,000, principal amount, of Equipment Trust Certificates, Series K, bearing interest or dividends 781 at 4½% per annum, issued under Equipment Trust Agreement dated November 1, 1929, between E. F. Yeager and Harry Wells, Vendors, The Pennsylvania Company for Insurances on Lives and Granting Annuities, Trustee, and the Debtor, and Lease collateral thereto, due in ten annual instalments from November 1, 1935 to November 1, 1944 inclusive. Payment of principal thereof and interest or dividends thereon is guaranteed by the Debtor.

17. $2,840,000, principal amount, of Equipment Trust Certificates, Series L, bearing interest or dividends at 4½% per annum, issued under Equipment Trust Agreement dated March 1, 1930, between E. F. Yeager and Harry Wells, Vendors, The Pennsylvania Company for Insurances on Lives and Granting Annuities, Trustee, and the Debtor, and Lease collateral thereto, due in ten annual instalments from March 1, 1936 to March 1, 1945 inclusive. Payment of Principal thereof and interest or dividends thereon is guaranteed by the Debtor.

18. $1,537,000, principal amount of Equipment Trust Certificates, Series M, bearing interest or dividends beginning one year from date of issue at 4% per annum, held by Federal Emergency Administration of Public Works, issued under Equipment Trust Agreement dated April 24, 1934, between George M. Erhart and Robert A.

Miller, Vendors, and Chemical Bank & Trust Company as Trustee, and the Debtor, and the Lease collateral thereto, and agreement supplemental thereto, due in twenty-four semi-annual instalments from March 1, 1936, to September 1, 1947 inclusive, guaranteed as to principal thereof and interest or dividends thereon by the Debtor, and additionally secured by the pledge with the Trustee of said Equipment Trust of $258,000, principal amount, of the Debtor's First and Refunding Mortgage 6% Bonds, Series A, due June 1, 1943.

19. $120,000, principal amount, of Equipment Trust Certificates, Series N, bearing interest or dividends beginning one year from date of issue at the rate of 4% per annum, held by Federal Emergency Administration of Public Works, issued under Equipment Trust Agreement dated June 11, 1935, between George M. Erhart and Robert A. Miller, Vendors, the Chemical Bank & Trust Company as Trustee, and the Debtor, due in ten annual instalments from May 1, 1936, to May 1, 1945 inclusive, guaranteed as to principal thereof and interest or dividends thereon by the Debtor.

20. Sub-Lease and conditional sales agreement dated July 21, 1930, between General American Tank Car Corporation and the Debtor, providing for the sublease by the Debtor from said General American Tank Car Corporation of 500 forty foot stock cars, subject to the title of Fidelity-Philadelphia Trust Company, lessor under lease and conditional sales agreement dated June 1, 1930, at a rental for said cars for a term of fifteen years, at the rate of 58½c per car per day, and providing that upon payment of said rental during said term, and the observance by the Debtor of the other terms of said agreement, then upon the expiration of said period of fifteen years, and the payment of $1.00, all of said stock cars shall be and become the property of the Debtor. The total amount of rental remaining due and payable for the remainder of said term on all said cars aggregates the sum of $1,103,017.50 of which $822,119.54 is considered as principal and $280,899.96 is considered as interest.

21. $11,499,462, aggregate principal amount, of promissory notes executed by the Debtor to Reconstruction Finance Corporation of which $7,999,462 bear interest at the rate of 6% per annum and $3,500,000 bear interest

at the rate of 5% per annum, but on which interest at
782 the rate of 4% per annum is presently being paid with the consent of Reconstruction Finance Corporation, due in varying amounts from June 30, 1935, to February 27, 1936, all secured by the pledge with Reconstruction Finance Corporation of an assignment of advances to Chicago Union Station Company in the amount of $3,793,360.61 and the pledge of $11,212,000, principal amount, of Chicago, Milwaukee and St. Paul Railway Company General Mortgage 5% Bonds, Series G, $6,000,000, principal amount, of the Debtor's First and Refunding Mortgage 6% Bonds, Series A, and $301,000, principal amount, of Bellingham Bay and British Columbia Railroad Company First Mortgage 5% Bonds.

22. $2,291,000, aggregate principal amount of promissory notes executed by the Debtor to Federal Emergency Administration of Public Works, bearing interest beginning one year from date of issue at the rate of 4% per annum, due in varying amounts from January 1, 1937, to January 1, 1944 inclusive, secured by the pledge with Federal Emergency Administration of Public Works of $2,665,000, principal amount, of the Debtor's First and Refunding Mortgage 6% Bonds, Series A.

23. $2,974,544, aggregate principal amount of promissory notes executed by the Debtor to The Railroad Credit Corporation, bearing interest at the New York Federal Reserve Bank rediscount rate, payable on demand, but if no demand is made, then payable $1,685,000 May 28, 1935 and $1,289,544 June 26, 1936, secured by the pledge of 4,995 shares of the par value of $100 each of the Capital Stock of Milwaukee Land Company, and agreement dated July 27, 1932, between the Debtor, Milwaukee Land Company and The Railroad Credit Corporation, as supplemented by agreement dated June 27, 1934, the Debtor's distributive share in the fund established under the Marshalling and Distributing Plan, 1931, and, subject to the prior lien of Reconstruction Finance Corporation, the collateral pledged to secure the notes to Reconstruction Finance Corporation and any loans hereafter made by Reconstruction Finance Corporation to the Debtor.

24. 1,193,073 shares of Non-Cumulative Participating 5% Preferred Stock of the Debtor, of the par value of $100 per share.

25. 1,174,060 shares of the Common Stock of the Debtor, without par value.

26. The Debtor is obligated under an indenture of lease dated July 1, 1921, made by Chicago, Terre Haute and Southeastern Railway Company to Chicago, Milwaukee and St. Paul Railway Company, which has been assumed or adopted by the Debtor, under which the lessee thereunder agrees to pay taxes, assessments, expenses and other sums and charges mentioned therein, and agrees to pay the principal and interest of bonds secured by mortgages upon the properties embraced in said lease and described therein, of which the following amounts of such bonds are outstanding:

(a) $250,000, principal amount, of Bedford Belt Railway Company First Mortgage 5% Bonds, due July 1, 1938, issued under the Indenture dated June 1, 1898, of The Bedford Belt Railway Company to The Equitable Trust Company, Trustee, under which Mercantile Trust and Savings Bank of Chicago and Benjamin H. Rubenzik are now Trustees, (in addition to which $100,000, principal amount of said Bonds are pledged under the Chicago, Terre Haute and Southeastern Railway Company First and Refunding Mortgage hereinafter described).

(b) $7,287,000, principal amount, of Southern Indiana Railway Company First Mortgage Four Per Cent Bonds, due February 1, 1951, issued under the Indenture
783 dated February 1, 1901, of The Southern Indiana Railway Company to The Equitable Trust Company, Trustee, under which Girard Trust Company is now Trustee.

(c) $8,056,000, principal amount, of Chicago, Terre Haute and Southeastern Railway Company First and Refunding Mortgage Fifty-Year Five Per Cent. Bonds due December 1, 1960, issued under the Indenture dated December 1, 1910, of Chicago, Terre Haute and Southeastern Railway Company to Illinois Trust and Savings Bank and William H. Henkle, Trustees, under which Continental Illinois National Bank and Trust Company of Chicago is now Corporate Trustee, (in addition to which $1,515,000, principal amount, of said Bonds are pledged under the Debtor's First and Refunding Mortgage).

(d) $6,336,000, principal amount, of Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Fifty-Year 5% Bonds due December 1, 1960, issued under the Indenture dated December 1, 1910, of Chicago,

Terre Haute and Southeastern Railway Company to First Trust and Savings Bank and Louis Boisot, Trustees, under which The First National Bank of Chicago is now Corporate Trustee.

27. There is outstanding certain current unsecured indebtedness of the Debtor incurred within six months prior to the date of the filing of the original petition herein by the Debtor, for labor, supplies, materials and services in the usual and customary operation of the properties of the Debtor, representing claims against a railroad corporation which would be entitled to priority over existing mortgages if a receiver in equity of the property of the Debtor had been appointed by a Federal court at the date of the filing of the petition, and which, pursuant to subsection (c) of Section 77 of the Bankruptcy Act are entitled to priority and are to be treated as a separate class of creditors. The amount of such claims has not yet been ascertained by the Debtor.

28. In addition there is outstanding certain current unsecured indebtedness of the Debtor not so entitled to priority, and the Debtor also has other claims, obligations and liabilities, secured or unsecured, under leases, agreements and contracts, and contingent liabilities, particularly under joint or several guarantees of bonds of terminal companies not hereinabove specifically described. The aggregate amount of such indebtedness and liabilities has not yet been ascertained by the Debtor.

Second: The plan of Reorganization of the Debtor dated July 1, 1935, annexed to the original petition of the Debtor herein as Exhibit A, does not affect or disturb:

(a) The $120,000. principal amount of Equipment Trust Certificates, Series N, described in paragraph 19 of Article First hereof;

(b) The obligations of the Debtor under the Sublease and conditional sales agreement with General American Tank Car Corporation described in paragraph 20 of Article First hereof;

(c) The unsecured claims entitled to priority, or not entitled to priority, and the other claims, obligations and liabilities described in paragraphs 27 and 28 of Article First hereof, all of which, to the extent not paid pursuant to the orders of the Court herein, are to be paid in cash by the Reorganized Company or assumed by the Reorganized Company pursuant to the provisions of said Plan of Reorganization.

Said Plan of Reorganization does affect or disturb all other claims and interests described in Article First hereof. The mortgage bonds described in Article First hereof constitute liens upon different lines of railroad and property owned or leased by the Debtor or are subject to different liens thereon. Each of the Equipment Trust Agreements, under which the Equipment Trust Certificates of the various series described in Article First hereof have been issued, constitute liens upon different equipment. The various promissory notes described in
784 Article First hereof are also secured by different collateral. The Debtor is advised and believes, therefore, that the holders of the different issues of bonds, equipment trust certificates and promissory notes described in Article First hereof constitute separate and distinct classes of creditors.

Third: Copies of the original petition herein and said Plan of Reorganization have been filed with the Interstate Commerce Commission pursuant to the provisions of Section 77 of the Bankruptcy Act, and the Debtor has requested the Interstate Commerce Commission to set an early date for a public hearing at which the Debtor may present said Plan of Reorganization, pursuant to the provisions of said Section 77. The Debtor is advised that Rule XLIX of the General Orders in Bankruptcy contemplates that an order by this Court, as hereinafter prayed, shall be entered herein and a copy thereof transmitted to the Interstate Commerce Commission, before said Commission holds a public hearing upon such said Plan of Reorganization.

Wherefore, the Debtor prays that this Court shall determine a reasonable time within which the claims and interests of creditors and stockholders of the Debtor may be filed or evidenced and after which no such claim or interest may participate in any plan except on order for cause shown, the manner in which such claims and interests may be filed or evidenced and allowed, and the division of creditors and stockholders into classes according to the nature of their respective claims and interests, and for such other authority in the premises as to the Court shall seem desirable.

Chicago, Milwaukee, St. Paul and
Pacific Railroad Company,
By H. A. Scandrett,
President.

O. W. Dynes and C. S. Jefferson,
Attorneys for the Debtor.

United States of America,
Northern District of Illinois, } ss.:
Eastern Division.

H. A. Scandrett, being duly sworn, deposes and says that he is an officer, to-wit: President of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a railroad corporation, the petitioning Debtor mentioned and described in the foregoing petition; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes them to be true.

H. A. Scandrett.

Subscribed and sworn to before me this 5th day of July, 1935.

W. L. Hunter,
Notary Public, Cook County, Illinois.

My commission expires February 28, 1938.

Filed July 6, 1935. Henry W. Freeman, Clerk.

785 And afterwards, to wit, on the 6th day of July, A. D. 1935, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Entered July 6, 1935.

786 Order No. 2.

IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—60463) * *

ORDER.

Upon due consideration of the petition of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the above-named Debtor, verified July 5, 1935, and filed herein this day praying for an order determining a reasonable time within which the claims and interests of creditors and stockholders of the Debtor may be filed or evidenced and

after which no such claim or interest may participate in any plan except on order for cause shown, the manner in which such claims and interests may be filed or evidenced and allowed, and the division of creditors and stockholders into classes according to the nature of their respective claims and interests, and for such other authority in the premises as to the Court shall seem desirable, and after hearing counsel for the Debtor, and the Court being fully advised in the premises, it is accordingly,

Ordered, Adjudged and Decreed as follows:

First. All claims and interests of creditors and stockholders of the Debtor shall be filed or evidenced, in the manner herein provided, on or before September 1, 1935. No such claim or interest may participate in any plan except on order for cause shown, unless filed or evidenced on or before September 1, 1935, and in the manner herein provided.

Second. The manner in which such claims and interests shall be filed or evidenced shall be as follows:

(a) For all purposes, except as hereinafter provided, the amount of the aggregate claims of the holders of mortgage bonds issued, assumed or guaranteed by the Debtor or constituting a lien upon property of the Debtor, and of equipment obligations guaranteed by the Debtor or constituting a lien upon property leased to the Debtor, and including the mortgage bonds constituting a lien upon the property embraced in the indenture of lease dated July 1, 1921, of Chicago, Terre Haute and Southeastern Railway Company to Chicago, Milwaukee, and St. Paul Railway Company, shall be evidenced (subject to final allowance thereof) as to each class of such bonds and each series of such equipment obligations, by the filing with the Clerk of this Court of a verified statement of the corporate trustee under the indenture or agreement securing such bonds or equipment obligations showing the principal amount of such bonds or equipment obligations outstanding, as shown by the records of such corporate trustee; and the amounts of such bonds and equipment obligations, if any, pledged to secure bonds of other issues, or other obligations of the Debtor, shall be evidenced, except as the Court shall
787 otherwise hereafter direct, by the filing with the Clerk of this Court of a verified statement of the pledgee thereof. For the purpose of being heard on any question arising in the proceedings or of participating in any plan

confirmed by this Court, all such claims shall be evidenced by presentation of such bonds and/or equipment obligations or of certificates of deposit of any bank, trust company or other depositary satisfactory to the Court representing, and entitling the holder thereto to the possession and ownership of, such bonds and/or equipment obligations, or, but only for the purpose of being heard on any such question, by presentation of the certificate of any bank, trust company or other depositary satisfactory to this Court stating that such bonds and/or equipment obligations are held by it for safekeeping or otherwise for account of the person or persons desiring to be heard.

(b) For all purposes, except as hereafter provided, the interests of the holders of Preferred Stock and Common Stock of the Debtor shall be evidenced by the stock books of the Debtor. For the purpose of being heard on any question arising in the proceeding or of participating in any plan confirmed by this Court, such interests shall be evidenced by presentation of the certificate or certificates representing any such stock, or, but only for the purpose of being heard on any such question, by the presentation of the certificate of any bank, trust company or other depositary satisfactory to this Court stating that the certificate or certificates representing such stock is or are held by it for safekeeping or otherwise for account of the person or persons desiring to be heard.

(c) All other claims or interest of whatever character shall, for all purposes, be evidenced (subject to final allowance thereof) by filing with the Clerk of this Court of verified proofs of claims in such form as may be approved by the Debtor and as may be acceptable to this Court, and, unless otherwise requested by the Debtor and directed by this Court, such proofs of claim may be in substantially the form of the official forms for proofs of claim prescribed by the Supreme Court of the United States; and, unless and until requested by the Debtor or otherwise directed by this Court, the originals of written instruments executed by the Debtor on which a claim purports to be founded, need not be filed with such proofs of claim.

Third. All claims and interests of creditors and stockholders of the Debtor shall in due course be allowed by this Court, or by a Special Master hereafter to be appointed pursuant to such orders and directions in respect thereof as may hereafter be made by this Court, when evidenced

as hereinbefore provided, unless this Court shall otherwise determine or unless objection to such allowance shall be filed with this Court or such Special Master (on or before such date as this Court may hereafter determine), in which case such claims or interests in respect of which such objections shall have been filed shall be proved before this Court or before such Special Master.

Fourth. The creditors and stockholders of the Debtor are hereby divided into the following classes according to the nature of their respective claims and interests (reference being made to said petition of the Debtor filed herein verified July 5, 1935, for a more detailed description thereof), to wit, the respective holders of the following claims and interests, each of the following numbered paragraphs constituting a separate class:

1. Milwaukee & Northern Railroad Company First Mortgage 4½% Bonds, whether or not extended and assumed by the Debtor.

2. Milwaukee and Northern Railroad Company
788 Consolidated Mortgage 4½% Bonds, whether or not extended and assumed by the Debtor.

3. Chicago, Milwaukee and Gary Railway Company First Mortgage Five Per Cent. Forty-Year Bonds, due April 1, 1948.

4. Chicago, Milwaukee and St. Paul Railway Company General Mortgage Bonds, due May 1, 1989, of Series A, Series B, Series C, Series E, Series F and Series G.

5. The Debtor's First and Refunding Mortgage 6% Bonds, Series A, due June 1, 1943.

6. The Debtor's Fifty-Year Five Per Cent. Mortgage Bonds due February 1, 1975.

7. The Debtor's Five Per Cent. Convertible Adjustment Mortgage Bonds due January 1, 2000.

8. Equipment Trust Certificates, Series A.
9. Equipment Trust Certificates, Series C.
10. Equipment Trust Certificates, Series D.
11. Equipment Trust Certificates, Series E.
12. Equipment Trust Certificates, Series F.
13. Equipment Trust Certificates, Series G.
14. Equipment Trust Certificates, Series H.
15. Equipment Trust Certificates, Series J.
16. Equipment Trust Certificates, Series K.
17. Equipment Trust Certificates, Series L.

18. Equipment Trust Certificates, Series M.

19. Equipment Trust Certificates, Series N.

20. Obligations of the Debtor under the Sub-Lease and conditional sales agreement dated July 21, 1930, with General American Tank Car Corporation.

21. The Debtor's secured promissory notes to Reconstruction Finance Corporation.

22. The Debtor's secured promissory notes to Federal Emergency Administration of Public Works.

23. The Debtor's secured promissory notes to The Railroad Credit Corporation.

24. The Debtor's Non-Cumulative Participating 5% Preferred Stock.

25. The Debtor's Common Stock.

26. The Bedford Belt Railway Company First Mortgage 5% Bonds, due July 1, 1938.

27. Southern Indiana Railway Company First Mortgage Four Per Cent. Bonds, due February 1, 1951.

28. Chicago, Terra Haute and Southeastern Railway Company First and Refunding Mortgage Fifty-Year Five Per Cent. Bonds, due December 1, 1960.

29. Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Fifty-Year 5% Bonds, due December 1, 1960.

30. Claims which would have been entitled to priority over existing mortgages if a receiver in equity of the property of the Debtor had been appointed by a Federal court at the date of the filing of the petition herein, and other claims entitled to priority under the Acts of Congress relating to bankruptcy.

31. All other claims, obligations and liabilities not hereinabove specifically described.

Fifth. The following claims and obligations are not, as set forth in the petition of the Debtor filed herein verified July 5, 1935, affected by the Debtor's Plan of Reorganization, dated July 1, 1935, in that appropriate provision is made in said Plan either that such claims or obligations shall not be disturbed or for the payment of said claims or obligations in cash, or the assumption thereof, by the Reorganized Company under said Plan, to the extent that the same shall not have been paid pursuant to orders of the Court herein:

(a) Equipment Trust Certificates, Series N;

(b) Obligations of the Debtor under the Sub-Lease and conditional sales agreement dated July 21, 1930, with General American Tank Car Corporation;

(c) Claims which would have been entitled to
789 priority over existing mortgages if a receiver in equity of the property of the Debtor had been appointed by a Federal court at the date of the filing of the petition herein, and other claims entitled to priority under the Acts of Congress relating to bankruptcy;

(d) All other claims, obligations and liabilities not hereinabove specifically described, for which provision is made in said Plan for payment in cash, or assumption thereof, by the Reorganized Company under said Plan to the extent not paid pursuant to orders of the Court herein.

Sixth. The Debtor shall give notice accordingly by mailing, at their respective addresses as shown by the records of the Debtor, a copy of this order (but omitting Exhibit A hereto hereinafter mentioned) to each of the corporate trustees under the indenture or agreements securing the above-mentioned mortgage bonds and equipment obligations, to Reconstruction Finance Corporation, to The Railroad Credit Corporation, to Federal Emergency Administration of Public Works, and to each known general creditor of the Debtor, and by publication once, in a newspaper published in the City of New York, State of New York, and in a newspaper published in the City of Chicago, State of Illinois, and in a newspaper published in the City of Milwaukee, State of Wisconsin, and in a newspaper published in the City of Butte, State of Montana, and in a newspaper published in the City of Seattle, State of Washington, of a notice of the determination of this Court herein contained. Such notice shall be in substantially the form of the notice annexed hereto and marked Exhibit A. All costs in connection therewith shall be paid by the Debtor. Said mailing and publication shall be made within twenty days from the date of the entry of this order, unless such times be extended by further order of the Court herein, and thereafter proof of such mailing and publication shall be filed herein, but the failure of any creditor to receive any such notice shall not, unless the Court in its discretion shall otherwise determine, constitute cause for extending the time within which any such creditor may comply with the provisions of this order.

Seventh. The foregoing division of creditors and stockholders into classes is without prejudice to the rights of any such creditors and stockholders and of the Debtor in any litigation or controversy, in respect of the claims and interests represented thereby, in the event that said Plan of Reorganization is not confirmed and consummated and such claims and interests disposed of in accordance with said Plan of Reorganization.

This Court reserves full right and jurisdiction to make, from time to time, such further orders (including orders reclassifying the claims or interests of creditors and stockholders) amplifying, extending, limiting or otherwise modifying this order as to it may at any time seem proper.

James H. Wilkerson,
U. S. D. J.

Dated July 6, 1935.

Filed July 6, 1935 Henry W. Freeman, Clerk.

810 And on, to wit, the 5th day of August, A. D. 1935, came the Debtor by its attorneys and filed in the Clerk's office of said Court its certain Petition re payment of rental obligations, in words and figures following, to wit: Filed Aug. 5, 1939.

811 Petition for Order No. 13.

IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—60463) * *

PETITION OF DEBTOR FOR AUTHORITY TO PAY RENTAL OBLIGATIONS ARISING UNDER ITS LEASE OF THE RAILROAD PROPERTIES OF THE CHICAGO, TERRE HAUTE AND SOUTHEASTERN RAILWAY COMPANY THAT HAVE MATURED AND THAT WILL HEREAFTER MATURE.

Now comes the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, and respectfully petitions the Court for authority to pay Debtor's rental obligations as Lessee of the railroad properties of the Chicago, Terre Haute and Southeastern Railway Company that have accrued and that will hereafter accrue and for an order fixing the time and place of a hearing on this

petition and providing the character and manner of publication of notice thereof to all creditors and stockholders of Debtor. In support of its said petition Debtor shows to the Court the following:

1. By the terms of a lease dated July 1, 1921, from the Chicago, Terre Haute and Southeastern Railway Company, lessor, to Chicago, Milwaukee & St. Paul Railway Company, lessee, the lessor grants to the lessee the right to occupy and operate its Blue Island Terminal Yards; 298.09 miles of railroad of the lessor extending from a point at or near the City of Chicago Heights, in the County of Cook State of Illinois, to the town of Westport, in the County of Decatur, State of Indiana; together with all branches, extensions and spurs of every description, all real property owned by the lessor, all terminal facilities of the lessor or of which it had the right of use and all other railway properties and facilities owned or leased by the lessor, including all engines, tenders, cars and other rolling stock and equipment.

2. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, as successor of the Chicago, Milwaukee & St. Paul Railway Company, succeeded to the latter's rights and obligations under said contract of lease by authority of resolution of its Board of Directors and by authority of certificate of public convenience and necessity issued by the Interstate Commerce Commission, the rental obligations of which include certain specified interest payments on certain specified dates hereinafter mentioned continuing default of which payments, or any of them, render the lease subject to cancellation by the lessor.

3. Of the coal consumed as locomotive fuel of the Company and in its shops more than 70% is from the coal mines on the lease line as illustrated by the following table:

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	1929	1933	1934
Tons purchased	4,105,299	2,402,132	2,466,589
From Terre Haute mines	2,953,476	1,748,197	1,767,650
	71.9%	72.8%	71.7%

The leased railroad interchanges traffic with other railroads, either directly or through connections, as follows:

Atchison, Topeka & Santa Fe—
Blue Island, Ill. (via B. & O. C. T. and Ind. Har. Belt) .....

Baltimore & Ohio—
Blue Island, Ill. (via B. & O. C. T. and Ind. Har. Belt) .....
Seymour, Ind. .....
West Dana, Ind. .....
Baltimore & Ohio Chicago Terminal—
Blue Island, Ill. .....
Chicago, Heights, Ill. .....
Belt Ry. of Chicago—
Blue Island, Ill. (via B. & O. C. T. and Ind. Har. Belt) .....
Chesapeake & Ohio—
Blue Island, Ill. (via B. & O. C. T. and Ind. Har. Belt) .....
Chicago & Alton—
Blue Island, Ill. (via B. & O. C. T. and Ind. Har. Belt) .....
Chicago & Calumet River—
Blue Island, Ill. (via B. & O. C. T. and Ind. Har. Belt) .....
Chicago & Eastern Illinois—
Blue Island, Ill. (via B. & O. C. T. and I. H. B.) .....
Chicago Heights, Ill. (via C. H. T. T.) .....
Terre Haute, Ind. .....
Chicago & Illinois Western—
Blue Island, Ill. (via B. & O. C. T. and I. H. B.) .....
Chicago & Northwestern—
Blue Island, Ill. (via B. & O. C. T. and I. H. B.) .....
Chicago, Aurora & Elgin—
Blue Island, Ill. (via Ind. Har. Belt) .....
Chicago, Burlington & Quincy—
Blue Island, Ill. (via B. & O. C. T. and I. H. B.) .....
Chicago, Great Western—
Blue Island, Ill. (via B. & O. C. T. and Ind. Har. Belt) .....
Chicago Heights Terminal Transfer—
Chicago Heights, Ill. and Chicago, Ill. (via B. & O. C. T.) .....
Chi., Indianapolis & Louisville—
Bedford, Ind. .....
Blue Island, Ill. (via B. & O. C. T. and Ind. Har. Belt) .....
Midland Jct., Ind. .....

Chicago Junction—
Blue Island, Ill. (via B. & O. C. T. and Ind. Har. Belt) .....
Chicago River & Indiana—
Blue Island, Ill. (via B. & O. C. T. & Ind. Har. Belt) .....
Chicago, Rock Is. & Pac.—
Blue Island, Ill. (via B. & O. C. T. and I. H. B.) .....
Chicago Short Line—
Blue Island, Ill. (via B. & O. C. T. and I. H. B.) .....
Chicago, South Shore & South Bend—
Blue Island, Ill. (via I. H. B. and B. & O. C. T.) .....
Chicago, W. Pullman & Sou.—
Blue Island, Ill. (via Ind. Har. Belt) .....
Cincinnati, Indianapolis & Western—See Baltimore & Ohio.
Cleve., Cin., Chi. & St. Louis—
Elmora, Ind. .....
Terre Haute, Ind. .....
Westport, Ind. .....
Elgin, Joliet & Eastern—
Chicago Heights, Ill. (via C. H. T. T.) .....
Erie—
Blue Island, Ill. (via B. & O. C. T. and I. H. B.) .....
Grand Trunk—
Blue Island, Ill. (via B. & O. C. T. and I. H. B.) .....
Illinois Central—
Blue Island, Ill. (via B. & O. C. T. and I. H. B.) .....
Linton, Ind. .....
Illinois Northern—
Blue Island, Ill. (via Ind. Har. Belt) .....
Indiana Harbor Belt—
Blue Island, Ill. .....
Manufacturers' Junction—
Blue Island, Ill. (via B. & O. C. T.) .....
Michigan Central—
Blue Island, Ill. (via Ind. Har. Belt) .....
Chicago Heights, Ill. (via C. H. T. T.) .....
Minneapolis, St. Paul & Saul Ste. Marie—
Blue Island, Ill. (via B. & O. C. T. and I. H. B.) .....

New York Central—
Blue Island, Ill. (via B. & O. C. T. and I. H. B.) .....
Delmar, Ill. .....

New York, Chicago & St. Louis—
Blue Island, Ill. (via B. & O. C. T. and Ind. Har. Belt) .....
Cheyneyville, Ill. .....
Humrick, Ill. .....

Pennsylvania—
Beehunter, Ind. .....
Blue Island, Ill. (via B. & O. C. T. and Ind. Har. Belt) .....
Seymour, Ind. .....
Terre Haute, Ind. .....

Pere Marquette—
Blue Island, Ill. (via B. & O. C. T. and Ind. Har. Belt) .....

Pullman—
Blue Island, Ill. (via I. H. B.) .....

Toledo, Peoria & Western—
Webster, Ill. .....

Wabash—
Blue Island, Ill. (via B. & O. C. T. and Ind. Har. Belt) .....
Newell, Ill. .....

A substantial volume of traffic is interchanged with other carriers at various points on the leased line as above set forth, a considerable amount of which has a haul on Debtor's lines other than the leased line. A substantial volume of traffic moves locally between points on the leased line, particularly into and out of the Chicago Switching District. A considerable volume of traffic originating on the leased line, mainly coal, moves to various other divisions of Debtor's system; and there is some traffic moving from and via Debtor's system for destination on the leased line.

In the opinion of Debtor's officers the leased property is earning the rental charges and the benefits to the Debtor's system, direct and indirect, are greatly in excess of all charges that Debtor is required to meet under the terms of the lease, including the interest charges on The Bedford Belt Railway Company bonds and on The

Southern Indiana Railway Company bonds, authority for paying which is herein requested, and including all charges prior to said charges.

4. Because of the substantial economies effected and the substantial commercial traffic above mentioned, the lease is a valuable asset of Debtor and its operations of the property are profitable to a degree that amply justifies preserving the lessee's rights thereunder.

5. That under the provisions of said lease there became due and payable on July 1, 1935 as part of Debtor's rental obligation and will thereafter become due and payable semi-annually in the same amount interest in the sum of $6,250.00 on the bonds of the Bedford Belt Railway Company; and that there also became due and payable under the provisions of said lease on August 1, 1935 as part of Debtor's obligation and will thereafter become due and payable semi-annually in the same amount by the Debtor interest in the sum of $145,740.00 on the bonds of the Southern Indiana Railway Company; that likewise under the provisions of said lease there will become due and payable on December 1, 1935 as part of Debtor's rental obligation and will thereafter become due and payable semi-annually in the same amount interest in the sum
813 of $201,400.00 on the First and Refunding Mortgage Bonds of the Chicago, Terre Haute and Southwestern Railway Company; that likewise under the provisions of said lease there will become due and payable on September 1, 1935 as part of Debtor's rental obligation, and will thereafter become due and payable semi-annually in the same amount interest in the sum of $158,400.00 on the Income Mortgage Bonds of the Chicago, Terre Haute and Southeastern Railway Company.

The amount of the Bedford Belt Railway Company First Mortgage Gold Bonds outstanding in the hands of the public is $250,000.00. The rate of interest is 5% per annum. The bonds mature July 1, 1938. The amount of the Southern Indiana Railway Company First Mortgage Gold Bonds outstanding is $7,287,000. The rate of interest is 4% per annum. The bonds mature February 1, 1951. The amount of the Chicago, Terre Haute and Southeastern Railway Company First and Refunding Mortgage Bonds outstanding in the hands of the public is $8,056,000.00. The rate of interest is 5% per annum. The bonds mature December 1, 1960. The amount of Chicago, Terre Haute and South-

eastern Railway Company Income Mortgage Bonds outstanding in the hands of the public is $6,336,000.00. The rate of interest is 5% per annum. The bonds mature December 1, 1960.

There are also past due coupons not presented for payment and not paid that became due and payable prior to July 1, 1935, which aggregate $23,271.50 and which, separated according to the different issues, are as follows:

Bedford Belt Railway First Mortgage Bonds	$ 1,025.00
Southern Indiana Railway First Mortgage Bonds	3,980.00
Chicago, Terre Haute and Southeastern Railway Company First and Refunding Mortgage Bonds	6,575.00
Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Bonds	11,691.50
	$23,271.50

6. Debtor has ample funds derived from operation of the property out of which to make each of said payments now due, requests for authority to pay which are included in this petition, and expects to have sufficient funds derived from operation of the property out of which to make said future interest payments as they become due.

Wherefore, Debtor prays that an order be entered fixing the time and place of hearing on this petition and the character and manner of publication of notice thereof to all creditors and stockholders of Debtor and that upon such hearing an order be entered authorizing and directing payment of the above specified past due coupons, authorizing and directing payment of interest that became due July 1, 1935 on the Bedford Belt Railway Company First Mortgage Gold Bonds in the sum of $6,250.00, authorizing and directing the payment of interest that became due August 1, 1935 on the Southern Indiana Railway Company First Mortgage Gold Bonds in the sum of $145,740.00 and further authorizing and directing future interest payments as they become due on the Bedford Belt Railway Company First Mortgage Gold Bonds; on the Southern Indiana Railway Company First Mortgage Bonds; on the Chicago, Terre Haute and Southeastern Railway Company First and Refunding
814 Mortgage Bonds and on the Chicago, Terre Haute and

Southeastern Railway Company Income Mortgage Bonds. Such future interest payments to continue until further order of the Court.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company,

Debtor,

By H. A. Scandrett.

O. W. Dynes
and
C. S. Jefferson,
Attorneys for Debtor.

[Verification omitted in printing.]

Filed Aug. 5, 1935, Henry W. Freeman, Clerk.

Entered Aug. 27, 1935.

842 And afterwards, to wit, on the 27th day of August, A. D. 1935, being one of the days of the regular August term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

843 Order No. 22.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

ORDER EXTENDING TIME FOR FILING CLAIMS AND INTERESTS OF CREDITORS OF THE DEBTOR TO AND INCLUDING OCTOBER 1, 1935.

This Court by Order No. 2, entered herein on July 6, 1935, having fixed September 1, 1935, as the last day for filing, in the manner therein provided, of all claims and interests of creditors of the Debtor, said Order further providing that no such claim or interest may participate in any plan, except on Order for cause shown, unless filed or evidenced on or before September 1, 1935, and the Court being advised by Counsel that numerous creditors have requested the Debtor to secure an extension of time for filing their said claims and interests in order that they may have the necessary time to adjust, correct, complete and verify said claims and interests, and the Court having heard the statement of Counsel, and being fully advised in the premises, on motion of Counsel for the Debtor, it is

Ordered, that the time fixed by Order No. 2, entered herein on July 6, 1935, for filing claims and interests of creditors of the Debtor be, and hereby is, extended to and including October 1, 1935.

It is further Ordered, that all claims arising from the disaffirmance of leases or other contracts may be filed within thirty (30) days after the date of such disaffirmance, irrespective of any other limitation of time in the order with respect to the date within which claims must be filed.

Except as hereby modified, said Order No. 2 entered herein on July 6, 1935, shall remain in full force and effect.

Enter:

James H. Wilkerson,
District Judge.

Order entered August 26th as modified by order entered August 27th, 1935.

844 And afterwards, to wit, on the 27th day of August, A. D. 1935, being one of the days of the regular August term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Entered Aug. 27 1935.

845 Order No. 24.

[This order entered on petition appearing at page 171.]

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

ORDER AUTHORIZING DEBTOR TO PAY RENTAL OBLIGATIONS ARISING UNDER ITS LEASE OF THE RAILROAD PROPERTIES OF THE CHICAGO, TERRE HAUTE AND SOUTHEASTERN RAILWAY COMPANY THAT HAVE MATURED AND THAT WILL HEREAFTER MATURE.

This cause coming on for further hearing on the petition of Debtor for authority to pay rental obligations arising under its lease of the railroad properties of the Chicago, Terre Haute and Southeastern Railway Company that have matured and that will hereafter mature, and the Debtor

having filed in this Court its report of compliance with the Order of the Court, entered herein on August 5, 1935, respecting publication of notice of hearing to all creditors and stockholders of the Debtor, and the Court having considered the verified petition, heard evidence offered by Debtor, statements of counsel, and being fully advised in the premises, it is

Ordered, that Debtor be, and it is hereby authorized and directed to pay interest that became due July 1, 1935, on the Bedford Belt Railway Company First Mortgage Gold Bonds in the sum of $6,250.00; interest that became due August 1, 1935, on the Southern Indiana Railway Company First Mortgage Gold Bonds in the sum of $145,740.00, past due interest coupons not presented for payment and not paid that became due and payable prior to July 1, 1935, on the Bedford Belt Railway First Mortgage Bonds in the sum of $1,025.00; on the Southern Indiana Railway First Mortgage Bonds in the sum of $3,980.00; on the Chicago, Terre Haute and Southeastern Railway Company First and Refunding Mortgage Bonds in the sum of $6,575.00; and on the Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Bonds in the sum of $11,691.50, and such future interest payments as they become due on the Bedford Belt Railway Company First Mortgage Gold Bonds; on the Southern Indiana Railway Company First Mortgage Bonds; on the Chicago, Terre Haute and Southeastern Railway Company First and Refunding Mortgage Bonds, and on the Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Bonds. Nothing in this order shall be construed to preclude or conclude the Debtor in respect of its right of election to disaffirm or discontinue said lease. The Court reserves full right, at any time, by such further orders in the premises as the Court may deem proper, to amend, extend, limit, modify or otherwise change or rescind the present order.

Enter:

James H. Wilkerson,
District Judge.

Dated August 27, 1935.

846 And afterwards, to wit, on the 30th day of August, 1935, being one of the days of the regular August term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Entered Aug. 30, 1935.

847 Order No. 28.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * * *

ORDER FIXING THE TIME AND PLACE OF HEARING, CHARACTER AND MANNER OF PUBLICATION OF NOTICE TO ALL CREDITORS AND STOCKHOLDERS OF DEBTOR, OF A HEARING TO BE HELD FOR THE APPOINTMENT BY THE COURT OF ONE OR MORE TRUSTEES OF THE DEBTOR'S PROPERTY.

On June 29, 1935, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, filed its petition herein stating that said Debtor was unable to meet its debts as they matured and that it desired to effect a plan of reorganization pursuant to Section 77 of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States" approved July 1, 1898, and Acts amendatory thereof and supplementary thereto.

The Court, being satisfied that said petition complied with said Section 77 and had been filed in good faith, thereupon by order entered herein on June 29, 1935, approved said petition as properly filed under said section of the Act, and authorized and directed the Debtor, pending further order of this Court, to continue in possession and control of its properties, assets and business, and to run, manage, maintain, operate and keep in proper condition and repair the railroad and properties of the Debtor, wherever situated, whether in this State, Judicial Circuit, or elsewhere, and to manage, operate and conduct its business and to exercise sundry other powers according to law and subject to such supervision and control by the Court as the Court might exercise by further orders entered herein. And the Court being advised that on August 27, 1935, said Section 77 was amended and the Debtor is now required

to give such notice as this Court may by order direct to the mortgage trustees, creditors and stockholders, and to cause publication thereof for such period and in such newspapers as this Court may direct, of a hearing to be held not later than thirty days after the date of such order, at which hearing or any adjournment thereof this Court shall appoint one or more trustees of the Debtor's property, such appointment to become effective upon ratification thereof by the Interstate Commerce Commission without a hearing, unless the said Commission shall deem a hearing necessary; it is

Ordered, that the Debtor is hereby directed to give notice by mailing a copy of this order to its mortgage trustees and to cause a notice directed to its creditors and stockholders to be published once, in a newspaper published
848 in the City of New York, State of New York, and in a newspaper published in the City of Chicago, State of Illinois, and in a newspaper published in the City of Milwaukee, State of Wisconsin, and in a newspaper published in the City of Seattle, State of Washington, of a hearing to be held on Tuesday, September 24, 1935, at ten o'clock A. M., in the court room usually occupied by this Court in the United States Court House, Chicago, Illinois, at which hearing, or any adjournment thereof, this Court will appoint one or more trustees of Debtor's property. Such notice shall be in substantially the form of the notice annexed hereto and marked "Exhibit A". All costs in connection therewith shall be paid by the Debtor. Said mailing and publication shall be made within ten days from the date of the entry of this order, unless such time be extended by further order of the Court herein and thereafter proof of such mailing and publication shall be filed with the Clerk of this Court.

Enter:

James H. Wilkerson,
District Judge.

Dated August 30, 1935.

EXHIBIT A.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

NOTICE.

Notice to All Creditors and Stockholders of the Above Named Debtor:

Pursuant to an order entered August 30, 1935, by the Honorable James H. Wilkerson, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division, Notice is hereby given that a hearing will be held on Tuesday, September 24, 1935, at ten o'clock A. M., by said Judge in the court room usually occupied by him in the United States Court House, Chicago, Illinois, at which hearing the Court will, pursuant to the provisions of Section 77 of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States" approved July 1, 1898, and Acts amendatory thereof
849 and supplementary thereto, appoint one or more trustees of the property of the Debtor.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Debtor.

Dated ....., 1935.

Published by Order of the Court.

872 And afterwards, to wit, on the 17th day of October, A. D. 1935, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

Entered Oct. 17, 1935. 873

Order No. 35.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER APPOINTING TRUSTEES.

The matter of appointing one or more Trustees of the Debtor's property, pursuant to the requirement contained in amended Section 77 of the Act of Congress entitled "An Act to establish a Uniform System of Bankruptcy throughout the United States" approved July 1, 1898, and Acts amendatory thereof and supplementary thereto, having come on to be heard on the 24th day of September, 1935, pursuant to the order of the Court entered herein on August 30, 1935, setting said matter for hearing at that time; and it appearing that notice of said hearing to the Mortgage Trustees and to the Creditors and Stockholders of the Debtor had been given and published as required by said order of August 30, 1935; and the matter having been adjourned from time to time for further hearing and the matter having been further heard on the 8th, 12th and 17th of October, 1935; and the Court having heard the recommendations and statements of counsel appearing for various interested parties desiring to be heard, and having fully considered the matter and being fully advised in the premises; it is

Ordered, that Henry A. Scandrett, who is an officer of said Debtor Corporation, and Walter J. Cummings and George I. Haight, who for more than one year prior to this date have not been an officer, director or employee of the Debtor Corporation, or of any subsidiary corporation, or of any holding company connected therewith, be, and they are hereby, appointed Trustees of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein;

That the said Trustees, on and after December 1, 1935, when duly qualified and when they shall have filed bonds effective as of that date with this Court as hereinafter provided, shall have all the title and shall exercise, subject to the control of this Court and consistently with the provisions of Section 77 of said Act, all of the powers of Trustees appointed pursuant to Section 44 of said Act

or any other pertinent section thereof; and, to the extent not inconsistent with said amendatory Section 77, shall have the powers of receivers in equity proceedings; and, subject to the control of this Court and subject to the jurisdiction of the Interstate Commerce Commission, as provided by the Interstate Commerce Act as now or hereafter amended, shall have the power to run, manage, maintain, operate and keep in proper condition and repair the railroad and properties of the Debtor wherever situated, whether in this State, Judicial Circuit or elsewhere; shall have the power to manage, operate and conduct Debtor's business and to this end exercise its rights and franchises and discharge its public duties; shall 874 have the power to employ in the performance of said duties the officers, counsel, attorneys, managers, superintendents, agents and employees of Debtor and discharge any thereof and employ others and fix their compensation, provided, however, that the compensation of all officers serving the Trustees in the management and operation of the railroad shall continue at the present rates until further order of this Court; and, conformably with said amended Section 77 and with Rule XLIV of the Rules in Bankruptcy of the Supreme Court of the United States, subject to confirmation as required by said section, may employ other legal counsel for the performance of such duties as the Trustees may assign and this Court, by further order, may approve;

That said Trustees, in addition, shall have all of the powers, rights, privileges, duties and obligations, not included in this order, that heretofore have been granted to or imposed upon the Debtor pursuant to the order of this Court entered herein on June 20, 1935, and any and all orders supplementary thereto or amendatory thereof; and each and all of the orders heretofore entered in this proceeding shall, with respect to the said Trustees and the property of the Debtor, be of like force and effect as though said Trustees were therein specifically named in the place of the Debtor, all of said orders being hereby incorporated in and made a part of this order by reference;

That each of said Trustees shall execute and file with the Clerk of this Court a bond with one or more sureties approved by the Clerk of this Court to be effective on and after December 1, 1935, for the benefit of whom it may concern, in the sum of Fifty Thousand Dollars

($50,000), conditioned to the effect that they will well and truly perform their duties as such Trustees and duly account for any moneys or properties which may come into their hands, and abide by and perform all things which they shall be directed by this Court to do.

This Court reserves full right and jurisdiction to make, from time to time, such orders amplifying, extending, limiting or otherwise modifying this order as to the Court may seem proper.

James H. Wilkerson,
United States District Judge.

October 17, 1935.

Entered Nov. 29, 1935.

899 And afterwards, to wit, on the 29th day of November, A. D. 1935, bing one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

900 Amended Order No. 35.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER AMENDING ORDER ENTERED OCTOBER 17, 1935, APPOINTING TRUSTEES.

It appearing that a hearing by the Interstate Commerce Commission on petitions for ratification of the appointments of Trustees made in this proceeding will be held on December 2, 1935, and the matter of ratification will not be determined prior thereto, on further consideration of the Order appointing Trustees filed in this cause on October 17, 1935, it is

Ordered, that Paragraph 3 of said Order entered in this cause on October 17, 1935, be amended by striking out the words

"on and after December 1, 1935 when duly qualified" in the first and second lines of said paragraph and inserting in lieu thereof the words,

"effective on the first day of the month next succeedings the date of the ratification of their appointments by the Interstate Commerce Commission".

It is further

Ordered, that Paragraph 5 of said Order be amended by striking out the words

"December 1, 1935"

in the fourth line of said paragraph and inserting in lieu thereof the words,

"the first day of the month next succeeding the date of the ratification of their appointments by the Interstate Commerce Commission".

Except as hereby amended, said Order entered herein on October 17, 1935, shall remain in full force and effect.

James H. Wilkerson,
District Judge.

Dated November 29, 1935.

906 And on, to wit, the 16th day of December, A. D. 1935 came the Debtor by its attorneys and filed in the Clerk's office of said Court its certain Petition for Extension of Time Within Which to Elect to Adopt or Dissaffirm Contract in words and figures following, to wit: Filed Dec. 16, 1935.

907 Petition for Order No. 47.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

PETITION OF DEBTOR FOR AN EXTENSION OF TIME WITHIN WHICH TO ELECT WHETHER TO ADOPT OR DISAFFIRM CONTRACTS.

The petition of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor in the above proceedings, respectfully represents:

(1) On June 29, 1935, this Court entered an Order granting the Debtor the power to elect whether to adopt or continue in force, or to refuse to adopt or continue in force, or to disaffirm or reject, any lease, trackage, terminal, crossing or operating agreement, or other contract not fully performed to which it is a party or under which it may be obligated, the Debtor to be allowed a period of six months (or such further period as this Court may allow) from the date of the entry of the Order to make such election.

(2) Since the entry of said Order Debtor has diligently proceeded with the work of examining its many leases, agreements and contracts to which it is a party or under which it may be obligated, in order to determine whether to elect to adopt or disaffirm same, but finds that it will not be able to complete the examination thereof within the time fixed by said Order.

Wherefore, Debtor prays that on Order may be entered extending the time until and including the first day of July, 1936, within which it, or the Trustees of the Debtor if then in office, may elect whether to adopt or disaffirm leases, agreements or contracts.

Chicago, Milwaukee, St. Paul and
Pacific Railroad Company,
Debtor,
By H. A. Scandrett,
President.

O. W. Dynes and C. S. Jefferson,
Attorneys for Debtor.

[Verification omitted in printing.]

Filed December 16, 1935. Henry W. Freeman, Clerk.

Entered Dec. 16, 1935.

908 And afterwards, to wit, on the 16th day of December, A. D. 1935, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

909 Order No. 47.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER EXTENDING TIME WITHIN WHICH TO ELECT WHETHER TO ADOPT OR DISAFFIRM CONTRACTS.

This cause coming on for hearing on the petition of Debtor for the entry of an Order extending the time within which to elect whether to adopt or disaffirm leases, agreements or contracts and the Court having considered the

petition, heard statements of counsel and being fully advised in the premises, it is

Ordered, that the Debtor, or the Trustees of the Debtor if then in office, be allowed until and including the first day of July, 1936, within which to elect whether to adopt or continue in force, or to refuse to adopt or continue in force, or to disaffirm or reject, any lease, trackage, terminal, crossing or operating agreement, or other contract not fully performed, to which it is a party or under which it may be obligated.

Except as hereby modified, Paragraph (4) of said Order of June 29, 1935, shall remain in full force and effect.

The Court reserves full right at any time by such further orders in the premises as the Court may deem proper to amend, modify or otherwise change or rescind the present Order.

Enter:

James H. Wilkerson,
District Judge.

Dated December 16, 1935.

915 And on, to wit, the 29th day of January, A. D. 1936 came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Petition in words and figures following, to wit: Filed Jan. 29, 1936.

916 Petition for Order No. 73.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

PETITION OF TRUSTEES TO JOIN AS PARTIES APPLICANT FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO ABANDON A CERTAIN BRANCH LINE IN THE STATE OF NORTH DAKOTA.

The petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of the Debtor herein, respectfully represents:

1. On or about May 6, 1935, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, filed its application with the Interstate Commerce Commis-

sion for a certificate of public convenience and necessity, permitting and authorizing the abandonment by it of its certain branch line of railroad, extending from the Station of Brampton to the Station of Cogswell, Sargent County, North Dakota, (I. C. C. Finance Docket No. 10842). Said application has been fully heard but the Interstate Commerce Commission has suggested that it deems it advisable that before rendering its decision the Trustees should be joined as parties to the proceedings.

2. The Trustees, since taking office on January 1, 1936, have considered the matter of the abandonment sought by said application and believe that said branch line, which extends from Brampton to Cogswell, all in Sargent County, State of North Dakota, a distance of 7.49 miles, is no longer necessary in the operation of the property, of which your petitioners are trustees, and they deem it advisable and in the interest of economy that said branch line be abandoned.

3. Petitioners represent that the abandonment of the branch line aforesaid will not unduly or adversely affect the public interest.

Wherefore, Petitioners recommend that they be granted authority to make application to the Interstate Commerce Commission to be joined as parties applicant in I. C. C. Finance Docket No. 10842, and that an order granting such authority be entered herein.

Henry A. Scandrett,
Walter J. Cummings,
George I. Haight,
Trustees.
By H. A. Scandrett,
One of said Trustees.

O. W. Dynes and C. S. Jefferson,
Attorneys for Trustees.

[Verification omitted in printing.]

Filed January 29, 1936. Henry W. Freeman, Clerk.

917 And afterwards, to wit, on the 29th day of January, A. D. 1936, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District JJudge, appears the following entry, to wit:

918 Order No. 73. Entered Jan. 29, 1936.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER AUTHORIZING TRUSTEES TO MAKE APPLICATION TO THE INTERSTATE COMMERCE COMMISSION TO BE JOINED AS PARTIES APPLICANT IN I. C. C. DOCKET NO. 10842, RELATIVE TO ABANDONMENT OF BRANCH LINE OF RAILROAD IN SARGENT COUNTY, NORTH DAKOTA.

This day coming on to be heard the petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company for authority to make application to the Interstate Commerce Commission to join as parties applicant for a certificate of public convenience and necessity for the abandonment of a certain branch line extending from the station of Brampton to the station of Cogswell, Sargent County, State of North Dakota, a distance of 7.49 miles, and the Court having heard the statements of counsel and being fully advised in the premises, it is

Ordered, that Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of the Debtor herein, be and the they are hereby authorized to make application to the Interstate Commerce Commission for an Order joining them as parties applicant in I. C. C. Finance Docket No. 10842, a proceeding heretofore instituted by the Debtor herein and involving the abandonment of a certain branch line in the State of North Dakota, extending from the station of Brampton to the station of Cogswell, Sargent County. It is further

Ordered, that if said certificate is granted by said Commission no action will be taken thereon by the said Trustees without further Order of the Court.

Enter:

James H. Wilkerson,
District Judge.

Dated January 29, 1936.

Filed Jan. 29, 1936.

919 And on, to wit, the 29th day of January, A. D. 1936 came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Petition in words and figures following, to wit:

920 **Petition for Order No. 74.**

IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—50463) • •

PETITION OF TRUSTEES FOR AUTHORITY TO MAKE APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO ABANDON CERTAIN BRANCH LINES IN THE STATE OF SOUTH DAKOTA.

The petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of the Debtor herein, respectively represents:

1. That a portion of said property consists of two branch lines of railroad in the State of South Dakota, extending as follows:

(a) From Marion Junction, a station on Petitioners' Iowa and Dakota Division, in Turner County, Southwesterly, a distance of approximately ten miles to the Station of Freeman, in Hutchinson County, State of South Dakota and

(b) From Scotland Junction, a point on Petitioners' Iowa and Dakota Division, Southwesterly, a distance of approximately 11.2 miles to the Station of Tyndall, all in Bon Homme County, State of South Dakota.

2. The reasons why Petitioners desire to abandon the two branch lines aforesaid are as follows:

Both of these branch lines were constructed in 1879. Until May, 1933, they were parts of a short route for business moving between Marion Junction, Springfield and Running Water. The line from Springfield to Running Water was abandoned in May, 1933, by authority of the Interstate Commerce Commission (Finance Docket No. 7492). In May, 1933, there was a general revision of train service in the territory served by both branch lines and since that time there has been no operation over the line from Scotland Junction to Tyndall. Since

May, 1935, there has been no operation over the line between Marion Junction and Freeman. The present service has proved economical and adequate and it is believed by your Petitioners that these two branch lines are no longer necessary and they deem it advisable and in the interest of economy that they be abandoned.

3. If abandonment is permitted, Petitioners will be enabled to salvage the lines and be relieved from the payment of taxes thereon. Petitioners are advised that the total net salvage from the two branch lines will amount to approximately $21,000.00 and the savings with respect to taxes on the two lines will amount to approximately $2,000.00 per annum.

4. Petitioners represent that the abandonment of the two branch lines aforesaid will not unduly or adversely affect the public interest.

Wherefore, Petitioners recommend that they be granted authority to make, verify and file an application to
921 the Interstate Commerce Commission for a certificate of public convenience and necessity permitting them to abandon the aforesaid two branch lines of railroad and that an order granting such authority be entered herein.

Henry A. Scandrett,
Walter J. Cummings,
George I. Haight,
Trustees.

By H. A. Scandrett,
One of the Trustees.

O. W. Dynes & C. S. Jefferson,
Attorneys for Trustees.

[Verification omitted in printing.]

Filed January 29, 1936. Henry W. Freeman, Clerk.

922 And afterwards, to wit, on the 29th day of January, A. D. 1936, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

Entered Jan. 29, 1936. 923 Order No. 74.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER AUTHORIZING TRUSTEES TO MAKE APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO ABANDON TWO CERTAIN BRANCH LINES IN THE STATE OF SOUTH DAKOTA.

This day coming on to be heard the petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company for authority to make applications to the Interstate Commerce Commission for certificates of public convenience and necessity to abandon two certain branch lines of railroad in the State of South Dakota, one line extending from Marion Junction to Freeman and the other line extending from Scotland Junction to Tyndall, and the Court having heard the statements of counsel and being fully advised in the premises, it is

Ordered, that Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of the Debtor herein, be and they are hereby authorized to make, verify and file applications to the Interstate Commerce Commission for certificates of public convenience and necessity permitting them to abandon the branch line of railroad extending from Marion Junction, in Turner County, South Dakota, Southwesterly, a distance of approximately ten miles, to the Station of Freeman, in Hutchinson County, South Dakota, and to abandon the branch line of railroad extending from Scotland Junction, Southwesterly, a distance of approximately 11.2 miles to the Station of Tyndall, all in Bon Homme County, State of South Dakota. It is further

Ordered, that if said certificates are granted by said Commission, no action will be taken thereon by the said Trustees without further Order of the Court.

Enter:

James H. Wilkerson,
District Judge.

Dated January 29, 1936.

967 And afterwards, to wit, on the 16th day of June, A. D. 1936, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Entered June 16, 1936.

968 Order No. 110.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER EXTENDING TIME WITHIN WHICH TO ELECT WHETHER TO ADOPT OR DISAFFIRM CONTRACTS TO AND INCLUDING DECEMBER 31, 1936.

This day coming on to be heard the oral motion of Counsel for Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, for an Order extending the time within which the Trustees may elect whether to adopt or disaffirm leases, agreements or contracts, and it being represented that the Trustees have not completed the examination of the leases, agreements and contracts to which the Debtor is a party, or under which it may be obligated, in order to determine whether to elect to adopt or disaffirm same within the time fixed by the Order of this Court entered herein on December 16, 1935, and it appearing that notice of said motion has been served on all parties to this proceeding, entitled to notice, and the Court having considered the motion, heard the statements of Counsel and being fully advised in the premises, it is

Ordered, that the time fixed by Order entered herein December 16, 1935, within which the Debtor, or the Trustees of the Debtor, if then in office, may elect whether to adopt or continue in force, or to refuse to adopt or continue in force, or to disaffirm or reject, any lease, trackage, terminal, crossing or operating agreement, or other contract not fully performed to which the Debtor is a party or under which it may be obligated, shall be extended to and including December 31, 1936.

Except as hereby modified, Paragraph (4) of the Order entered herein June 29, 1935, shall remain in full force and effect.

The Court reserves full right at any time by such further Orders in the premises as the Court may deem proper, to amend, modify or otherwise change or rescind the present Order.

Enter:

James H. Wilkerson,
District Judge.

Dated June 16, 1936.

Filed Sept. 10, 1936.

978 And on, to wit, the 10th day of September, 1936, came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Petition in words and figures following, to wit:

979 Petition for Order No. .....

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

PETITION FOR APPROVAL OF ADOPTION BY THE TRUSTEES OF AGREEMENT ENTERED INTO ON MAY 21, 1936, BETWEEN RAILROAD MANAGEMENTS AND RAILROAD LABOR ORGANIZATIONS REGARDING DISMISSAL WAGE PAYMENTS.

The petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, respectfully represents:

1. On May 21, 1936, a Joint Conference Committee, representing most of the Class I Railroad Carriers of the United States and representatives of the employees of said Railroad Carriers, entered into a written agreement, effective June 18, 1936, regarding allowances to be paid to employees dismissed from service by reason of coordination of railroad facilities, in whole or in part, by two or more railroad carriers made parties to this agreement. A copy of said agreement is attached hereto and marked "Exhibit A".

2. As to railroad companies in the hands of Receivers

or Trustees, said agreement was entered into subject to the approval of the Court having jurisdiction over said companies of its adoption by such Receivers or Trustees.

980 3. Petitioners are of the opinion that said agreement, if adopted by them, would be in the interest of and of benefit to the Trust Estate.

Wherefore, your Petitioners pray that adoption by the Trustees of said agreement, as set forth in Exhibit "A", attached hereto and made a part hereof, be approved.

Henry A. Scandrett,
Walter J. Cummings,
George I. Haight,
Trustees,
By Henry A. Scandrett,
One of said Trustees.

O. W. Dynes and
C. S. Jefferson,
Attorneys for Trustees.

981 United States of America
Northern District of Illinois } ss.
Eastern Division

Henry A. Scandrett, being duly sworn, deposes and says that he is one of the Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company; that he has read the foregoing petition and knows the contents thereof and that the facts alleged therein are true as he verily believes.

Henry A. Scandrett.

Subscribed and Sworn to before me this 4th day of September, 1936.

R. W. Spangenberg,
(Seal) *Notary Public, Cook County, Illinois.*

My Commission Expires June 7, 1939.

982 EXHIBIT A.

Agreement of May, 1936, Washington, D. C.

This agreement is entered into between the carriers listed and defined in Appendices "A", "B" and "C" attached hereto and made a part hereof, represented by the duly authorized Joint Conference Committee signatory hereto, as party of the first part, and the employes of said carriers, represented by the organizations signatory hereto by their respective duly authorized executives, as party of the second part, and, so far as necessary to carry out the provisions hereof, is also to be construed as a separate agreement by and between and in behalf of each of said carriers and its employes who are now or may hereafter be represented by any of said organizations which now has (or may hereafter have during the life of this agreement) an agreement with such carrier concerning rates of pay, rules or working conditions.

The signatories hereto, having been respectively duly authorized as aforesaid to negotiate to a conclusion certain pending issues concerning the treatment of employes who may be affected by coordination as hereinafter defined, hereby agree:

Section 1. That the fundamental scope and purpose of this agreement is to provide for allowances to defined employees affected by coordination as hereinafter defined, and it is the intent that the provisions of this agreement are to be restricted to those changes in employment in the Railroad Industry solely due to and resulting from such coordination. Therefore, the parties hereto understand and agree that fluctuations, rises and falls and changes in volume or character of employment brought about solely by other causes are not within the contemplation of the parties hereto, or covered by or intended to be covered by this agreement.

Section 2 (a). The term "coordination" as used herein means joint action by two or more carriers whereby they unify, consolidate, merger or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities.

(b) The term "carrier" as used herein when it refers

to other than parties to this agreement means any carrier subject to the provisions of Part I of the Interstate Commerce Act; when it refers to a party to this agreement it means any company or system listed and described in Appendices "A", "B" or "C" as a single carrier party to this agreement.

(c) The term "time of coordination" as used herein includes the period following the effective date of a coordination during which changes consequent upon coordination are being made effective; as applying to a particular employee it means the date in said period when that employee is first adversely affected as a result of said coordination.

Section 3 (a). The provisions of this agreement shall be effective and shall be applied whenever two or more carriers parties hereto undertake a coordination; and it is understood that if a carrier or carriers parties hereto undertake a coordination with a carrier or carriers not parties hereto, such coordination will be made only upon the basis of an agreement approved by all of the carriers parties thereto and all of the organizations of employees involved (parties hereto) of all of the carriers concerned. No coordination involving classes of employees not represented by any of the organizations parties hereto shall be undertaken by the carriers parties hereto except in accord with the provisions of this agreement or agreements arising hereunder.

(b) Each carrier listed and established as a separate carrier for the purposes of this agreement, as provided in Appendices "A", "B" and "C", shall be regarded as a separate carrier for the purposes hereof during the life of this agreement; provided, however, that in the case of any coordination involving two or more railroad carriers which also involves the Railway Express Agency, Inc., the latter company shall be treated as a separate carrier with respect to its operations on each of the railroads involved.

(c) It is definitely understood that the action of the parties hereto in listing and establishing as a single carrier any system which comprises more than one operating company is taken solely for the purposes of this agreement and shall not be construed or used by either party hereto to limit or affect the rights of the other with respect to matters not falling within the scope and terms of this agreement.

Section 4. Each carrier contemplating a coordination shall give at least ninety (90) days written notice of such

intended coordination by posting a notice on bulletin boards convenient to the interested employes of each such carrier and by sending registered mail notice to the representatives of such interested employes. Such notice shall contain a full and adequate statement of the proposed changes to be effected by such coordination, including an estimate of the number of employes of each class affected by the intended changes. The date and place of a conference between representatives of all the parties interested in such intended changes for the purpose of reaching agreements with respect to the application thereto of the terms and conditions of this agreement, shall be agreed upon within ten (10) days after the receipt of said notice, and conference shall commence within thirty (30) days from the date of such notice.

Section 5. Each plan of coordination which results in the displacement of employes or rearrangement of forces shall provide for the selection of forces from the employes of all the carriers involved on bases accepted as appropriate for application in the particular case; and any assignment of employes made necessary by a coordination shall be made on the basis of an agreement between the carriers and the organizations of the employes affected, parties hereto. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with Section 13.

Section 6 (a). No employee of any of the carriers involved in a particular coordination who is continued in service shall, for a period not exceeding five years following the effective date of such coordination, be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those
983 of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline.

(b) The protection afforded by the foregoing paragraph shall be made effective whenever appropriate through what is hereby designated as a "displacement allowance" which shall be determined in each instance in the manner hereinafter described. Any employee entitled to such an allowance is hereinafter referred to as a "displaced" employee.

(c) Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last twelve (12) months in which he performed service immediately preceding the date of his displacement (such twelve (12) months being hereinafter referred to as the "test period") and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and average monthly time paid for, which shall be the minimum amounts used to guarantee the displaced employee, and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the text period.

Section 7 (a). Any employee of any of the carriers participating in a particular coordination who is deprived of employment as a result of said coordination shall be accorded an allowance (hereinafter termed a coordination allowance), based on length of service, which (except in the case of an employee with less than one year of service) shall be a monthly allowance equivalent in each instance to sixty per cent (60%) of the average monthly compensation of the employee in question during the last twelve months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the coordination. This coordination allowance will be made to each eligible employee while unemployed by his home road or in the coordinated operation during a period beginning at the date he is first deprived of employment as a result of the coordination and extending in each instance

for a length of time determined and limited by the following schedule:

Length of Service	Period of Payment
1 yr. and less than 2 yrs.	6 months
2 yrs. " " " 3 "	12 "
3 yrs. " " " 5 "	18 "
5 yrs. " " " 10 "	36 "
10 yrs. " " " 15 "	48 "
15 yrs. and over	60 "

In the case of an employee with less than one year of service, the total coordination allowance shall be a lump sum payment in an amount equivalent to sixty (60) days pay at the straight time daily rate of the last position held by him at the time he is deprived of employment as a result of the coordination.

(b) For the purposes of this agreement the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization he will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(c) An employee shall be regarded as deprived of his employment and entitled to a coordination allowance in the following cases:

1. When the position which he holds on his home road is abolished as result of coordination and he is unable to obtain by the exercise of his seniority rights another position on his home road or a position in the coordinated operation, or

2. When the position he holds on his home road is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of said coordination, or by other employees, brought about as a proximate consequence of the coordination, and if he is unable

by the exercise of his seniority rights to secure another position on his home road or a position in the coordinated operation.

(d) An employee shall not be regarded as deprived of employment in case of his resignation, death, retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally, dismissal for justifiable cause in accordance with the rules, or furloughed because of reduction in forces due to seasonal requirements of the service; nor shall any employee be regarded as deprived of employment as the result of a particular coordination who is not deprived of his employment within three years from the effective date of said coordination.

(e) Each employee receiving a coordination allowance shall keep the employer informed of his address and the name and address of any other person by whom he may be regularly employed.

(f) The coordination allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished while he is absent from service, he will be entitled to the coordination allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a coordination allowance on the basis of said position until the regular employee is available for service and thereafter shall revert to his previous status and will be given a coordination allowance accordingly if any is due.

(g) An employee receiving a coordination allowance shall be subject to call to return to service after being notified in accordance with the working agreement, and such employee may be required to return to the service of the employing carrier for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his place of
984 residence, if his return does not infringe upon the employment rights of other employees under the working agreement.

(h) If an employee who is receiving a coordination allowance returns to service the coordination allowance shall cease while he is so reemployed and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a coordination allowance. During the time of such reemployment

however he shall be entitled to protection in accordance with the provisions of Section 6.

(i) If an employee who is receiving a coordination allowance obtains railroad employment (other than with his home road or in the coordinated operation) his coordination allowance shall be reduced to the extent that the sum total of his earnings in such employment and his allowance exceeds the amount upon which his coordination allowance is based; provided that this shall not apply to employees with less than one year's service.

(j) A coordination allowance shall cease prior to the expiration of its prescribed period in the event of:

1. Failure without good cause to return to service in accordance with working agreement after being notified of position for which he is eligible and as provided in paragraphs (g) and (h).
2. Resignation.
3. Death.
4. Retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally.
5. Dismissal for justifiable cause.

Section 8. An employee affected by a particular coordination shall not be deprived of benefits attaching to his previous employment, such as free transportation, pensions, hospitalization, relief, etc., under the same conditions and so long as such benefits continue to be accorded to other employees on his home road, in active service or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

Section 9. Any employee eligible to receive a coordination allowance under section 7 hereof may, at his option at the time of coordination, resign and (in lieu of all other benefits and protections provided in this agreement) accept in a lump sum a separation allowance determined in accordance with the following schedule:

Length of Service	Separation Allowance
1 year & less than 2 years	3 months' pay
2 years " " " 3 "	6 " "
3 " " " " 5 "	9 " "
5 " " " " 10 "	12 " "
10 " " " " 15 "	12 " "
15 years and over	12 " "

In the case of employees with less than one years' service, five days' pay, at the rate of the position last occupied, for each month in which they performed service will be paid as the lump sum.

(a) Length of service shall be computed as provided in Section 7.

(b) One month's pay shall be computed by multiplying by 30 the daily rate of pay received by the employee in the position last occupied prior to time of coordination.

Section 10 (a) Any employee who is retained in the service of any carrier involved in a particular coordination (or who is later restored to service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as result of such coordination and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter, (not to exceed two working days), used in securing a place of residence in his new location. The exact extent of the responsibility of the carrier under this provision and the ways and means of transportation shall be agreed upon in advance between the carrier responsible and the organization of the employee affected. No claim for expenses under this Section shall be allowed unless they are incurred within three years from the date of coordination and the claim must be submitted within ninety (90) days after the expenses are incurred.

(b) If any such employee is furloughed within three years after changing his point of employment as a result of coordination and elects to move his place of residence back to his original point of employment, the carrier shall assume the expense of moving his household and other personal effects under the conditions imposed in paragraph (a) of this section.

(c) Except to the extent provided in paragraph (b) changes in place of residence subsequent to the initial changes caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

Section 11 (a). The following provisions shall apply, to the extent they are applicable in each instance, to any employee who is retained in the service of any of the carriers involved in a particular coordination (or who is later restored to such service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as a result of such coordination and is therefore required to move his place of residence:

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the coordination to be unaffected thereby. The employing carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party.

2. If the employee is under a contract to purchase his home, the employing carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligations under this contract.

985 3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the employing carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

(b) Changes in place of residence subsequent to the initial change caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this Section.

(c) No claim for loss shall be paid under the provisions of this section which is not presented within three years after the effective date of the coordination.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employees and the carrier

on whose line the controversy arises and in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the representatives of the employees and the carrier, respectively; these two shall endeavor by agreement within ten days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser, and in the event of failure to agree then the Chairman of the Interstate Commerce Commission shall be requested to appoint the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the salary of the appraiser selected by such party.

Section 12. If any carrier shall rearrange or adjust its forces in anticipation of a coordination, with the purpose or effect of depriving an employee of benefits to which he should be entitled under this agreement as an employee immediately affected by a coordination, this agreement shall apply to such an employee as of the date when he is so affected.

Section 13. In the event that any dispute or controversy arises (except as defined in Section 11) in connection with a particular coordination, including an interpretation, application or enforcement of any of the provisions of this agreement (or of the agreement entered into between the carriers and the representatives of the employees relating to said coordination as contemplated by this agreement) which is not composed by the parties thereto within thirty days after same arises, it may be referred by either party for consideration and determination to a Committee which is hereby established, composed in the first instance of the signatories to this agreement. Each party to this agreement may name such persons from time to time as each party desires to serve on such Committee as its representatives in substitution for such original members. Should the Committee be unable to agree, it shall select a neutral referee and in the event it is unable to agree within 10 days upon the selection of said referee, then the members on either side may request the National Mediation Board to

appoint a referee. The case shall again be considered by the Committee and the referee and the decision of the referee shall be final and conclusive. The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

Section 14. Any carrier not initially a party to this agreement may become a party by serving notice of its desire to do so by mail upon the members of the Committee established by Section 13 hereof. It shall become a party as of the date of the service of such notice or upon such later date as may be specified therein.

Section 51. This agreement shall be effective June 18, 1936, and be in full force and effect for a period of five years from that date and continue in effect thereafter with the privilege that and carrier or organization party hereto may then withdraw from the agreement after one year from having served notice of its intention so to withdraw; provided, however, that any rights of the parties hereto or of individuals established and fixed during the term of this agreement shall continue in full force and effect, notwithstanding the expiration of the agreement or the exercise by a carrier or an organization of the right to withdraw therefrom.

This agreement shall be subject to revision by mutual agreement of the parties hereto at any time, but only after the serving of a sixty (60) days notice by either party upon the other.

For the participating carriers listed in Appendix A:

H. A. Enochs,
Jno. B. Walton,
Wm. White.

For the participating carriers listed in Appendix B:

C. A. Clements,
E. Konnors,
C. M. Decker.

For the participating carriers listed in Appendix C:

H. A. Benton,
W. J. Jenks, G.E.B.
J. B. Parrish.

For the participating carriers:

H. A. Enochs,
Chairman, Joint Conference Committee.

For the participating organizations of employees:

A. Johnston by W. J. B.,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.

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D. B. Robertson,
President, Brotherhood of Locomotive Firemen and Enginemen.

J. A. Phillips,
President, Order of Railway Conductors of America.

A. F. Whitney,
President, Brotherhood of Railroad Trainmen.

T. C. Casler,
President, Switchmen's Union of North America.

E. J. Manion,
President, Order of Railroad Telegraphers.

(Signature illegible),
President, American Train Dispatchers' Association.

(Signature illegible),
President, International Association of Machinists.

J. A. Franklin,
President, International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America.

Ray Ham,
President, International Brotherhood of Blacksmiths, Drop Forgers and Helpers.

John J. Hynes,
President, Sheet Metal Workers' International Association.

C. J. McGlogan,
Vice-President, International Brotherhood of Electrical Workers.

Felix H. Knight,
President, Brotherhood Railway Carmen of America.

J. F. McNamara,
President, International Brotherhood of Firemen and Oilers.

F. H. Fljozdal,
President, Brotherhood of Maintenance of Way Employes.

E. M. Harrison,
President, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

A. E. Lyon,
Acting President, Brotherhood of Railroad Signalmen of America.

M. S. Warfield,
President, Order of Sleeping Car Conductors.

James J. Delaney,
President, National Organization Masters, Mates & Pilots of America.

Wm. S. Brown,
President, National Marine Engineers' Beneficial Association.

International Longshoremen's Association.

E. M. Harrison,
Chairman, Railway Labor Executives' Association.

Signed at Washington, D. C.
May 21, 1936.

987

Appendix A.

List of Carriers in Eastern Territory Parties to Agreement.

Carrier (1)	Properties and Operations included in the authorization as part of, and to be considered as part of, the carrier listed in Column 1. (2)
Ann Arbor	
Baltimore & Ohio	
Bessemer & ake Erie	
Boston & Maine	
Boston Terminal	
Central R. R. of N. J.	
Cincinnati Union Terminal Co.	
Chicago, Indianapolis & Louisville	
Chicago River and Indiana	
Cleveland Union Terminals Co.	
Dayton Union	
Delaware, Lackawanna & Western	
Detroit & Toledo Shore Line	
Detroit Terminal	
Detroit, Toledo & Ironton	
Erie	Chicago & Erie; New Jersey & New York; New York, Susquehanna & Western
Indianapolis Union	
Indiana Harbor Belt	
Lehigh & Hudson River	
Lehigh & New England	
Lehigh Valley	
Long Island	
Maine Central	
Monongahela	
The New York Central Railroad Company	All leased lines.
New York, Chicago & St. Louis	
New York, New Haven & Hartford	
Pennsylvania	Waynesburg & Washington; Balto. & Eastern
Penna.-Reading Seashore Lines	
Pere Marquette	
Pittsburgh & Lake Erie	Lake Erie and Eastern
Portland Terminal Co.	
Railway Express Agency, Inc.	
Reading	
Rutland	
Staten Island Rapid Transit	
Washington Terminal	
Western Maryland	
Wheeling & Lake Erie	Lorain & West Virginia

Note: Agreement subject to approval of court with respect to lines in hands of Receivers or Trustees.

Appendix B.
List of Carriers in Western Territory Parties to Agreement.

Carrier (1)	Properties and Operations included in the authorization as part of, and to be considered as part of, the carrier listed in Column 1. (2)
Alameda Belt Line	
Alton & Southern R. R.	
Alton Railroad Co., The	
Atchison, Topeka & Santa Fe Ry. Co., The	Gulf, Colorado & Santa Fe Ry. Co. Panhandle & Santa Fe Ry. Co.
Atchison Union Railway & Depot Co.	
Baltimore & Ohio Chicago Terminal R. R. Co., The	
Belt Railway Company of Chicago	
Burlington-Rock Island R. R. Co.	
Camas Prairie R. R. Co.	
Chicago & Eastern Illinois Ry. Co.	
Chicago & Illinois Midland Ry. Co.	
Chicago & North Western Ry. Co.	
Chicago & Western Indiana R. R. Co.	
Chicago, Burlington & Quincy R. R. Co.	Quincy, Omaha & Kansas City R. R.
Chicago, Milwaukee, St. Paul & Pacific R. R. Co.	Chicago, Terre Haute & Southeastern Ry. Co.
Chicago, Rock Island & Pacific Ry. Co., The	Chicago, Rock Island & Gulf Ry. Co. Peoria Terminal Co.
Chicago, St. Paul, Minneapolis & Omaha Ry. Co.	
Chicago Union Station Co.	
Colorado & Southern Ry. Co.	
Davenport, Rock Island & Northwestern Ry. Co.	
Denver & Rio Grande Western R. R. Co., The	
Denver & Salt Lake Ry. Co., The	
Denver Union Terminal Ry. Co., The	
Des Moines Union Ry. Co.	Iowa Railway Transfer Co.
Duluth, Missabe & Northern Ry.	Duluth & Iron Range R. R.
Duluth, South Shore & Atlantic Ry. Co.	Mineral Range R. R. Co.
East Portland Freight Terminal	
East St. Louis Junction R. R.	
Elgin, Joliet & Eastern Ry. Co.	
Fort Smith & Western Ry.	
Fort Worth & Denver City Ry. Co.	Wichita Valley Ry. Co., The

Note: Agreement subject to approval of court with respect to lines in hands of Receivers or Trustees.

988 **Appendix B (Continued).**

List of Carriers in Western Territory Parties to Agreement.

Carrier (1)	Properties and Operations included in the authorization as part of, and to be considered as part of, the carrier listed in Column 1. (2)
Fort Worth Belt Ry. Co. Galveston, Houston & Henderson R. R. Great Northern Ry. Co. Green Bay & Western R. R. Co.	
Gulf Coast Lines	New Orleans, Texas & Mexico Ry. Co., St. Louis, Brownsville & Mexico Ry. Co., Beaumont, Sour Lake & Western Ry. Co., Houston & Brazos Valley Ry. Co., San Antonio, Uvalde & Gulf R. R. Co., Sugar Land Ry. Co., Rio Grande City Ry. Co., Asherton & Gulf Ry. Co., Asphalt Belt Ry. Co., San Antonio Southern Ry. Co., San Benito & Rio Grande Valley Ry. Co., Orange & Northwestern R. R. Co., New Iberia & Northern R. R. Co., Iberia, St. Mary & Eastern R. R. Co.
Houston Belt & Terminal Ry. Co. International-Great Northern R. R. Kansas City Terminal Ry. Co. Kansas, Oklahoma & Gulf Ry. Co. Lake Superior & Ishpeming R. R. Co. Litchfield & Madison Ry. Co. Manufacturers Ry. Co. (St. Louis) Midland Valley R. R. Co. Minneapolis, St. Paul & Saulte Ste. Marie Ry. Co.	
Minneapolis & St. Louis R. R. Co., The	Railway Transfer Co. of the City of Minneapolis
Minnesota Transfer Railway Co., The	
Minnesota & International Ry. Co.	Big Fork & International Falls Ry. Co.
Missouri-Illinois R. R. Co.	
Missouri-Kansas-Texas R. R. Co.	Missouri-Kansas-Texas R. R. Co. of Texas, Texas Central R. R. Co., The Wichita Falls Ry. Co., The Wichita Falls & Northwestern Ry. of Texas, Wichita Falls & Wellington Ry. Co. of Texas, Beaver, Meade & Englewood R. R.

Note: Agreement subject to approval of court with respect to lines in hands of Receivers or Trustees.

Appendix B (Continued).

List of Carriers in Western Territory Parties to Agreement.

Carrier (1)	Properties and Operations included in the authorization as part of, and to be considered as part of, the carrier listed in Column 1. (2)
Missouri Pacific R. R. Co.	Missouri Pacific R. R. Corporation in Nebraska, Fort Smith Suburban Ry., Natchez & Southern Ry., Natchez & Louisiana Ry. Transfer Co. (Boat), The Chester & Mt. Vernon R. R., Booneville, St. Louis & Southern Ry. Co., Cairo & Thebes R. R. Co., Marion & Eastern R. R. Co.
Northern Pacific Ry. Co. Northern Pacific Terminal Co. of Oregon, The Northwestern Pacific R. R. Co. Ogden Union Ry. & Depot Co.	
Oklahoma City-Ada-Atoka Ry. Co. Oregon, California & Eastern Ry. Co. Peoria & Pekin Union Ry. Co. Port Terminal Railroad Association (Houston) Pueblo Union Depot & Railroad Co., The Railway Express Agency, Inc. Rock Island-Frisco Terminal Ry. Co. St. Joseph Terminal R. R. Co. St. Joseph Union Depot Co. St. Paul Union Depot Co., The St. Louis & O'Fallon Ry. Co.	
St. Louis-San Francisco Ry. Co.	St. Louis-San Francisco & Texas Ry., Ft. Worth & Rio Grande Ry., Birmingham Belt R. R. Co.
St. Louis Southwestern Ry. Co.	St. Louis Southwestern Ry. Co. of Texas, Dallas Terminal Ry. & Union Depot Co.
Salt Lake City Union Depot & R. R. Co., The San Diego & Arizona Eastern Ry. Co. Sioux City Terminal Ry. Co. South Omaha Terminal Ry. Co. Southern Pacific Company-Pacific Lines	
Spokane, Portland & Seattle Ry. Co.	Oregon Trunk Ry., Oregon Electric Ry. Co., United Railways Co.

Note: Agreement subject to approval of court with respect to lines in hands of Receivers or Trustees.

989 **Appendix B (Continued).**

List of Carriers in Western Territory Parties to Agreement.

Carrier (1)	Properties and Operations included in the authorization as part of, and to be considered as part of, the carrier listed in Column 1. (2)
Spokane, Couer d'Alene & Palouse Ry. Co. Spokane International Ry.	
Terminal Railroad Ass'n. of St. Louis	St. Louis Merchants Bridge Terminal Ry., East St. Louis Connecting Ry., St. Louis Transfer Ry.
Texas & Pacific Ry., The	Weatherford, Mineral Wells & Northwestern Ry. Co., The, Texas-New Mexico Ry. Co., Abilene & Southern Ry. Co., Texas Short Line Ry., Pecos Valley Southern Ry. Co., The, Cisco & Northeastern Ry. Co.
Texas Pacific-Missouri Pacific Terminal R. R. of New Orleans	
Texas & New Orleans R. R. Co.	Galveston, Harrisburg & San Antonio Ry. Co., The, Texas & New Orleans R. R. Co., Louisiana Western R. R. Co., Morgan's Louisiana & Texas R. R. & S. S. Co., Iberia & Vermillion R. R. Co., Houston & Texas Central R. R. Co., The Texas Midland R. R., Galveston, Harrisburg & San Antonio Ry. Co., The (Austin Div.), Houston, East & West Texas R. R. Co., The Houston & Shreveport R. R. Co.
Tidewater Southern Ry. Co. Tulsa Union Depot Co. Union Railway Co. (Memphis, Tenn.)	
Union Pacific R. R.	Eastern District, Central District, Northwestern District, Southwestern District.
Union Terminal Co. (Dallas, Tex.) Union Terminal Ry. Co. (St. Joseph, Mo.) Wabash Ry. Co. Western Pacific R. R. Co., The Wichita Union Terminal Ry. Co., The	

Note: Agreement subject to approval of court with respect to lines in hands of Receivers or Trustees.

Appendix C.

List of Carriers in Southeastern Territory Parties to Agreement.

Carrier (1)	Properties and Operations included in the authorization as part of, and to be considered as part of, the carrier listed in Column 1. (2)
Central of Georgia Railway	
Chesapeake & Ohio Railway	
Columbus & Greenville	
Illinois Central System	
Macon, Dublin and Savannah	
Norfolk & Western Railway Company	
Norfolk Southern Railway Company	
Railway Express Agency, Inc.	
Richmond, Fredericksburg & Potomac	
Seaboard Air Line Railway	
Tavares and Gulf	
Virginian	

Note: Agreement subject to approval of court with respect to lines in hands of Receivers or Trustees.

Endorsed: District Court of United States * * (Caption—60463) * * Petition for Approval of Adoption by the Trustees of Agreement Entered Into on May 21, 1936, Between Railroad Managements and Railroad Labor Organizations regarding Dismissal Wage Payments. Filed Sep 10 1936. Henry W. Freeman, Clerk.

991 And afterwards, to wit, on the 10th day of September, A. D. 1936, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Entered Sept. 10, 1936.

992 Order No. 133.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * * (Caption—60463) * *

ORDER APPROVING ADOPTION BY THE TRUSTEES OF AN AGREEMENT ENTERED INTO ON MAY 21, 1936 BETWEEN RAILROAD MANAGEMENTS AND RAILROAD LABOR ORGANIZATIONS REGARDING DISMISSAL WAGE PAYMENTS.

This day coming on to be heard the verified petition of the Trustees for approval of adoption by them of an agreement entered into on May 21, 1936, between railroad managements and railroad labor organizations regarding allowances to be paid to employees dismissed from service by reason of coordination of railroad facilities, in whole or in part, by two or more railroad carriers, signatory to the agreement, a copy of said agreement being attached to said petition, made a part thereof, and marked "Exhibit A," and it appearing that a copy of said petition has been served on all parties to this proceeding entitled to notice, and the Court having considered the petition, heard the statements of Counsel, and being fully advised in the premises, it is

Ordered, that the adoption by Henry A. Scandrett, Walter J. Cummings and George I. Haight, as Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company of said agreement in the form set forth in Exhibit "A" to the petition of the Trustees, be, and the same is hereby, approved.

Enter:

James H. Wilkerson,
District Judge.

Dated September 10, 1936.

Entered Nov. 30, 1936.

1077 And afterwards, to wit, on the 30th day of November, A. D. 1936, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

1078 Order No. 167.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

Order Authorizing Trustees to Make Application to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity Authorizing (1) Abandonment of 12.53 Miles of Branch Line Railroad Between Monroe and Lowell, Snohomish County, Washington; (2) To Extend the Railroad Operations of the Trust Estate by Operating Over Approximately 12.07 Miles of Main Line of the Great Northern Railway Company Between Monroe and Lowell, Snohomish County, Washington; (3) To Extend Railroad Operation of Trust Estate by Operating Over the Lines of the Northern Pacific Railway Company, Approximately 2.70 Miles Between Lowell and Everett, Snohomish County, Washington; (4) to Construct Necessary Connecting Tracks to Put Plan of Joint Operation Into Effect.

This day coming on to be heard the verified petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, for authority to make application to the Interstate Commerce Commission for a Certificate of Public Convenience and Necessity authorizing the abandonment of certain branch line mileage in Snohomish County, State of Washington, and to extend railroad operations of the Trust Estate by operating over the main line of the Great Northern Railway Company, between Monroe and Lowell in that County and over a line of the Northern Pacific Railway Company between Lowell and Everett in the same county, and to construct necessary connecting tracks to put the plan of joint operation into effect, and it appearing that a copy of said petition has been

served on all parties to this proceeding, entitled to notice, and the Court having considered the petition, heard the statements of Counsel, and being fully advised in the premises, it is

Ordered, that Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of the Debtor herein, be, and they are hereby, authorized to make application to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing (1) abandonment of 12.53 miles of branch line railroad between Monroe and Lowell, and approximately 1.70 miles in the cities of Lowell and Everett, Snohomish County, Washington; (2) to extend the railroad operations of the Trust Estate by operating over approximately 12.07 miles of main line of the Great Northern Railway Company between Monroe and Lowell, Snohomish County, Washington; (3) to extend railroad operation of the Trust Estate by operating over
1079 the lines of the Northern Pacific Railway Company approximately 2.70 miles between Lowell and Everett, Snohomish County, Washington; (4) to construct necessary connecting tracks to put plan of joint operation into effect.

Upon approval by the Interstate Commerce Commission of the application for authority to extend the railroad operations and to abandon certain lines of railroad, of the Trust Estate, hereinabove mentioned, in Snohomish County, State of Washington, the Trustees are hereby authorized to extend said operations and to abandon said lines of railroad.

Enter:

James H. Wilkerson,
District Judge.

Dated November 30, 1936.

1080 And on, to wit, the 3rd day of December, A. D. 1936 came the Trustees by their attorneys and filed in the Clerk's office of said Court certain Petition for Authority Re Coordination with Chicago Great Western Railroad Company, etc. in words and figures following, to wit:

Filed Dec. 3, 1936. 1081 Petition for Order No. 169.

IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—60463) • •

Petition of Trustees for Authority (1) To Enter Into an Agreement with Trustees of Chicago Great Western Railroad Company Respecting Coordination of the Railroad Lines of the Respective Parties Between the City of Red Wing and the Town of Cannon Falls in the State of Minnesota, and (2) To Apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity Authorizing (a) Acquisition of an Undivided One-Half Interest in and Operating Rights Over the Line of the Trustees of the Property of Chicago Great Western Railroad Company Between Said Points (b) To Abandon 14.11 Miles of the Line of the Trust Estate Between Cannon Junction and a Point 3.35 Miles East of Cannon Falls (3) To Abandon Same When Authorized to Do So By the Interstate Commerce Commission.

The petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, respectfully represents:

1. Petitioners have negotiated an agreement with the Trustees of the Chicago Great Western Railroad Company whereby it is proposed to effect a coordination of the railroad lines of the parties between the City of Red Wing and the Town of Cannon Falls in the State of Minnesota, and under which rail service between said points will be performed over the railroad of the Trustees of the property of Chicago Great Western Railroad Company from the existing point of physical connection between the two lines in the City of Red Wing, to the existing point of physical connection between the two lines in the town of Cannon Falls, a distance of approximately 21.60 miles.

2. Each party now owns and operates a branch line of railroad between Red Wing and Cannon Falls, which lines are located on opposite banks of the Cannon River, and closely parallel each other for the entire distance between said points.

3. The agreement proposes that the Trustees of the property of Chicago Great Western Railroad Company will grant to your Petitioners an undivided one-half interest in the line of railroad of the former, between said points, said grant to be under orders, authorities and terms, such as to be binding upon the successors of the grantors and to inure to the benefit of the successors of the grantees. Said grant is to be subject to presently existing mortgage liens thereon or to the liens thereon of any mortgage, which in the reorganization of the grantors' railroad may be substituted in place of and for the retirement of any presently existing mortgage that is a lien thereon.

1082 4. Petitioners believe that the volume of traffic now and heretofore moving over the separate parallel lines and anticipated for future movement over such lines, is such that it can be conveniently, economically and efficiently handled by a single jointly owned and operated line.

5. Upon the approval of the proposed plan of coordination the Trust Estate will be enabled, subject to the approval of the Interstate Commerce Commission, and the Court, to abandone 14.11 miles of its branch line between Cannon Junction and a point approximately 3.35 miles easterly of Cannon Falls, the line between Cannon Falls and a point 3.35 miles easterly thereof to be retained as a spur track for the purpose of serving a county sanitarium.

6. The agreement also proposes to divide between the parties equally the annual savings estimated at $14,800.00 per annum, and to divide between them equally any expense in connection with effecting the coordination, excepting that dismissal wage obligations, if any, in respect of present employees of this Trust Estate, will be borne by it. The total expense to both of the parties effecting the coordination is estimated at $1,314.00, and the agreement will provide that this Trust Estate will retain the salvage recoverable from the 14.11 miles of its branch line to be abandoned, the estimated net value of which is $10,500.

7. The agreement further provides that if at any future time your Trustees should permanently discontinue operations between Red Wing and Cannon Falls over the line of the Grantors, the undivided one-half interest of the

Grantors, proposed under the agreement to be deeded to the Trustees, will automatically revert to the Grantors without payment of any monetary consideration.

8. The Petitioners believe it will be to the benefit of the Trust Estate, its creditors and stockholders to carry into effect the said proposed coordination and consolidation of rail operation.

Wherefore, your Petitioners pray that an order be entered authorizing them (1) to enter into an agreement with the Trustees of Chicago Great Western Railroad Company respecting coordination of railroad lines of the respective parties between the City of Red Wing and the Town of Cannon Falls in the State of Minnesota, and (2) to apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity authorizing (a) acquisition of an undivided one-half interest in and operating rights over the line of the Trustees of the property of Chicago Great Western Railroad Company between said points, (b) to abandon 14.11 miles of the line of the Trust Estate between Cannon Junction and a point 3.35 miles east of Cannon Falls in the State of Minnesota, and (3) to abandon same and operate under such acquired operating rights when authorized so to abandon and operate by the Interstate Commerce Commission.

Henry A. Scandrett,
Walter J. Cummings,
George I. Haight,
Trustees of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company.
By Henry A. Scandrett,
One of said Trustees.

O. W. Dynes and
C. S. Jefferson,
Attorneys for Trustees.

[Verification omitted in printing.]

Filed December 3, 1936. Henry W. Freeman, Clerk.

1083 And afterwards, to wit, on the 3rd day of December, A. D. 1936, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Entered Dec. 3, 1936.

1084 **Order No. 169.**

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

Order Authorizing Trustees (1) to Enter Into an Agreement With Trustees of Chicago Great Western Railroad Company Respecting Coordination of the Railroad Lines of the Respective Parties Between the City of Red Wing and the Town of Cannon Falls in the State of Minnesota, and (2) to Apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity Authorizing (a) Acquisition of an Undivided One-half Interest in and Operating Rights Over the Line of the Trustees of the Property of Chicago Great Western Railroad Company Between Said Points (b) to Abandon 14.11 Miles of the Line of the Trust Estate Between Cannon Junction and a Point 3.35 Miles East of Cannon Falls (3) to Abandon Same When Authorized to Do So by the Interstate Commerce Commission.

This day coming on to be heard the verified petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, for authority to enter into an agreement with the Trustees of Chicago Great Western Railroad Company respecting coordination of the railroad lines of the respective parties between the City of Red Wing and the Town of Cannon Falls in the State of Minnesota and to apply to the Interstate Commerce Commission for a Certificate of Public Convenience and Necessity authorizing acquisition of an undivided one-half interest in and operating rights over the Lines of the Trustees of the property of Chicago Great Western Railroad Company between said points and to abandon 14.11 miles of the line of the Trust Estate between Cannon Junction and a point 3.35 miles East of Cannon Falls in the State of Minnesota, and to abandon same and

operate under such acquired operating rights when authorized so to abandon and operate by the Interstate Commerce Commission, and it appearing that a copy of said petition has been served on all parties to this proceeding, entitled to notice, and the Court having considered the petition, heard the statements of Counsel, and being fully advised in the premises, it is

Ordered, that Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of the Debtor herein, be and they are hereby, authorized (1) to enter into an agreement with the Trustees of Chicago Great Western Railroad Company respecting coordination of railroad lines of the respective parties between the City of Red Wing and the Town of Cannon Falls in the State of Minnesota, and (2) to apply to the Interstate Commerce Commission for Certificate of Public Convenience and
1085 Necessity authorizing (a) acquisition of an undivided one-half interest in and the right to operate over the line of the Trustees of the property of Chicago Great Western Railroad Company between said points, (b) to abandon 14.11 miles of the line of the Trust Estate between Cannon Junction and a point 3.35 miles east of the Cannon Falls in the State of Minnesota, and (3) to abandon same and operate under such acquired operating rights when authorized so to abandon and operate by the Interstate Commerce Commission.

Enter:

James H. Wilkerson,
District Judge.

Dated December 3, 1936.

1086 And afterwards, to wit, on the 12th day of December, A. D. 1936, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

1087 Order No. 173. Entered Dec. 12, 1936.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER EXTENDING TIME WITHIN WHICH TO ELECT WHETHER TO ADOPT OR DISAFFIRM CONTRACTS TO AND INCLUDING JULY 31, 1937.

This day coming on to be heard the oral motion of Counsel for Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, for an Order extending the time within which the Trustees may elect whether to adopt or disaffirm leases, agreements or contracts and it being represented that the Trustees have not completed the examination of the Leases, the Agreements and Contracts to which the Debtor is a party, or under which it may be obligated, in order to determine whether to elect to adopt or disaffirm same within the time fixed by the Order of this Court entered herein on June 16, 1936, and it appearing that Notice of said Motion has been served on all parties to this proceeding, entitled to notice, and the Court having considered the Motion, heard the Statements of Counsel, and being fully advised in the premises, it is

Ordered, that the time fixed by Order entered herein June 16, 1936, within which the Trustees may elect whether to adopt or continue in force, or to refuse to adopt or continue in force, or to disaffirm or reject, any lease, trackage, terminal, crossing or operating agreement, or other contract not fully performed, to which the Debtor is a party, or under which it may be obligated, shall be extended to and including July 31, 1937.

Except as hereby modified, Paragraph (4) of the Order entered herein June 29, 1935, shall remain in full force and effect.

The Court reserves full right at any time upon such further orders in the premises as the Court may deem proper, to amend, modify, or otherwise change or rescind the present Order.

Enter:

James H. Wilkerson,
District Judge.

Dated December 12, 1936.

Filed Jan. 12, 1937.

1097 An on, to wit, the 12th day of January, A. D. 1937, came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Petition in words and figures following, to wit:

1098 Petition for Order No. 188.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

PETITION OF TRUSTEES FOR AUTHORITY TO MAKE APPLICATION TO THE INTERSTATE COMMERCE COMMISSION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AUTHORIZING ABANDONMENT OF 58 MILES OF BRANCH LINE RAILROAD OF THE TRUST ESTATE, BETWEEN TURKEY RIVER JUNCTION, CLAYTON COUNTY, AND WEST UNION, FAYETTE COUNTY, IOWA.

The petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, respectfully represents:

1. The Trust Estate owns and operates a branch line of railroad between Turkey River Junction, Clayton County, and West Union, Fayette County, Iowa, a distance of 58 miles. Said branch line leaves the Dubuque and Illinois Division of the railroad of the Trust Estate at Turkey River Junction, and extends from that point, in a northwesterly direction, to the terminus of said branch line at West Union. For a considerable portion of the distance, said branch line closely parallels the Turkey and Volga Rivers, and crosses these streams several times, generally on steel trusses. The rail on said line is old, light and worn, and if the line is continued in operation, it will be necessary to expend increasingly larger sums for maintenance in future years.

2. A study of the earnings on this branch line for the past several years discloses a marked decline in revenues from traffic originating and terminating on the line. From an amount of $265,718 in 1928, total freight charges on traffic originating and terminating on the branch line declined to $161,738 in 1931, and to $82,940 in 1935, the

expenses of operation remaining nearly uniform throughout that period. After allocating to the branch line Twenty-Five Per cent (25%) of the total system freight revenue on traffic originating and terminating on the line, and actual earnings to the branch line of other revenues earned by it, the loss to the Trust Estate, after deducting out of pocket expenses and taxes for the Year 1935, was approximately $63,983. Crediting all system revenues to the branch line, and deducting an out of pocket expense for movement over other lines of the system of Twenty-Five Per Cent (25%) of the revenues, operation for the Year 1935 resulted in a loss to the Trust Estate of Thirty Thousand Six Hundred Forty-Nine Dollars ($30,649). A similar study made for the Year 1933 indicated that the line itself was operated at loss of Fifty-Five Thousand
1099 Eight Hundred Twenty-Eight Dollars ($55,828), and, crediting the branch line with all system revenues and expenses as above, the operation showed a loss of Sixteen Thousand Seven Hundred Twenty-Two Dollars ($16,722).

3. The territory served is purely agricultural, devoted principally to farming and the raising of live stock. The study made by the Petitioners indicates that some of the traffic formerly handled on the line has been diverted to other forms of transportation and that the number of cars of live stock forwarded from stations on the line declined from 750 cars in 1930 to 234 cars in 1935, although it is doubtful whether there has been any decrease in the amount of live stock raised for shipment to market. While revenues for the first nine months of 1936 are larger than for the same period in 1935, Petitioners are of the opinion that, with the necessity of expending increasingly larger sums for maintenance in future years, continued operation of the line will result in further substantial annual losses to the Trust Estate.

4. If abandonment of said branch line is permitted, Petitioners will be enabled to recover salvage and the Trust Estate will be relieved from the payment of taxes on said line. It is estimated that the total net salvage from said line will amount to approximately Ninety Thousand Dollars ($90,000.00) and the savings with respect to taxes will amount to approximately Fifteen Thousand Dollars ($15,000) per annum.

5. Petitioners represent that the abandonment of said branch line aforesaid will not unduly or adversely affect the public interest.

Wherefore, your Petitioners pray that an order may be entered, authorizing them to make application to the Interstate Commerce Commission for a Certificate of Public Convenience and Necessity, authorizing the abandonment of 58 miles of branch line railroad of the Trust Estate, between Turkey River Junction, in Clayton County, and West Union, in Fayette County, State of Iowa, and that upon approval by the Interstate Commerce Commission of the Petitioners' application for authority to abandon said branch line of railroad, the Trustees be authorized to abandon same.

Henry A. Scandrett,
Walter J. Cummings,
George I. Haight,
Trustees.
By Henry A. Scandrett,
One of said Trustees.

O. W. Dynes and
C. S. Jefferson,
Attorneys for Trustees.

[Verification omitted in printing.]

Filed January 12, 1937. Henry W. Freeman, Clerk.

1100 And afterwards, to wit, on the 12th day of January, A. D. 1937, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

1101 Order No. 188. Entered Jan. 12, 1937.

IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—60463) • •

ORDER AUTHORIZING TRUSTEES TO MAKE APPLICATION TO THE INTERSTATE COMMERCE COMMISSION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING ABANDONMENT OF FIFTY-EIGHT MILES OF BRANCH LINE RAILROAD OF THE TRUST ESTATE BETWEEN TURKEY RIVER JUNCTION, CLAYTON COUNTY, AND WEST UNION, FAYETTE COUNTY, IOWA.

This day coming on to be heard the verified petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, for authority to make application to the Interstate Commerce Commission for a Certificate of Public Convenience and Necessity authorizing the abandonment of Fifty-Eight miles of branch line railroad of the Trust Estate, in Clayton and Fayette Counties, Iowa, and it appearing that a copy of said petition has been served on all parties to this proceeding entitled to notice, and the Court having considered the petition, heard the statements of Counsel, and being fully advised in the premises, it is

Ordered, that Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Debtor herein, be, and they are hereby, authorized to make application to the Interstate Commerce Commission for a Certificate of Public Convenience and Necessity, authorizing the abandonment of Fifty-Eight Miles of branch line railroad of the Trust Estate, between Turkey River Junction, in Clayton County, and West Union in Fayette County, State of Iowa and that upon approval by the Interstate Commerce Commission of the Trustees' application for authority to abandon said branch line of railroad, the Trustees are authorized to abandon same.

Enter:

James H. Wilkerson,
District Judge.

Dated January 12, 1937.

Entered Jan. 12, 1937.

1106 And afterwards, to wit, on the 12th day of January, A. D. 1937, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

1107 Order No. 187.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

Order Authorizing Trustees (1) to Enter Into an Arrangement With the Great Northern Railway Company for Joint Use of Certain Trackage and (2) to Convey for That Purpose to Said Railway Company Free of Liens 15.10 Miles of Branch Line of Railroad in Exchange for a Similar Conveyance by Said Railway Company to the Trust Estate Free of Liens 14.97 Miles of Branch Line of Railroad (3) and for Authority to Make Application to the Interstate Commerce Commission for a Certificate of Public Convenience and Necessity Authorizing (a) Abandonment of 15.94 Miles of Branch Line of Railroad (b) Operate Over Acquired Branch Line and (c) Construct Necessary Connecting Tracks, All in Fergus, Cascade and Teton Counties in the State of Montana.

This day coming on to be heard the verified petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, for authority (1) to enter into an arrangement with The Great Northern Railway Company for joint use of certain trackage and (2) to convey for that purpose to said Railway Company free of liens 15.10 miles of branch line of railroad (3) and for authority to make application to the Interstate Commerce Commission for a certificate of public convenience and necessity authorizing (a) abandonment of 15.94 miles of branch line of railroad (b) operate over acquired branch line and (c) construct necessary connecting tracks, all in Fergus, Cascade and Teton Counties in the State of Montana; and it appearing that a copy of said petition has been served on all parties to this proceeding, entitled to notice, and the Court having considered the petition, heard

statements of counsel and being fully advised in the premises, it is

Ordered, that Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property herein, be, and they are hereby, authorized to make application to the Interstate Commerce Commission for its authority to abandon said 15.94 miles of branch line of railroad, operate over said 14.97 miles of branch line of railroad, proposed to be acquired from the Great Northern Railway Company and to construct the necessary track connections for
1108 joint operation of said trackage in Fergus, Cascade and Teton Counties in the State of Montana, and

Ordered, that, if said application to the Interstate Commerce Commission be granted, the Trustees shall serve on all parties entitled to notice in this proceeding, a notice setting the time and place of a further hearing before this Court on the matter of a sale free of mortgage liens of the said 15.10 miles of branch line of railroad, the acquisition free of mortgage liens of 14.97 miles of branch line of railroad, the abandonment of 15.94 miles of branch line of railroad and the construction of necessary track connections for joint operation, all in the Counties of Fergus, Cascade and Teton, State of Montana, and on the matter of authority to apply to the Trustees under mortgages on the portion of the Trust Estate proposed to be sold free of mortgage liens for releases by such trustees of those mortgages and the subjecting to the liens of such mortgages the 14.97 miles of branch line sought to be acquired.

Enter:

James H. Wilkerson,
District Judge.

Dated January 12, 1937.

Filed Jan. 21, 1937.

1114 And on, to wit, the 21st day of January, 1937, came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Petition for Approval of Improvement Budget for the Year 1937 in words and figures following, to wit:

1115 Petition for Order No. .....

IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—60463) • •

PETITION OF TRUSTEES FOR APPROVAL OF IMPROVEMENT BUDGET FOR YEAR 1937.

The petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, respectfully represents:

1. Attached hereto and made a part hereof as Exhibit "A" is a summary of Petitioners' proposed Improvement Budget, Part 1 of which contains proposed expenditures considered necessary during 1937 for the purposes and in the amounts in said Part 1 indicated. For financial reasons Petitioners have divided the proposed Budget into two parts, Part 1 of which contains items which the Trustees are of the opinion should be authorized at this time and Part 2 of which contains items for projects which should be carried out if business continues to improve and which Petitioners propose to bring to the attention of the Court on or before the middle of the year 1937 for such

1116 order as the Court may then deem appropriate. If, in the judgment of the Trustees, it becomes necessary to carry out some project, or projects, specified in Part 2 of Exhibit "A" in preference to some project, or projects, specified in Part 1 of said Exhibit, Petitioners desire authority to exercise such preference, the equivalent amount of the expenditure so made for carrying out said project, or projects, to be deducted from the amount of the ex-

penditure authorized for projects specified in Part 1 of said Exhibit "A".

2. Parts 1 and 2 of said Exhibit "A" are summarized as follows:

Part 1	
Expenditures which are necessary: (1) For safety; (2) To provide facilities required to maintain schedules and service comparable with that of competing roads; (3) To comply with the requirements of State or Federal Authorities; (4) To produce annual savings or increase in net revenue of 50% or more of their cost; (5) To complete projects authorized in 1936	$5,497,333
To replace turntables, enlarge enginehouses, strengthen bridges, etc., necessary to the operation of new freight locomotives	$ 600,000
Initial payments for new equipment	$1,974,358
Total Part 1	$8,071,691
Part 2	
Expenditures for projects which should be carried out if business continues to improve	$1,100,227
Initial payments for new equipment	$ 674,800
Total Part 2	$1,775,027
Total Part 1 and Part 2 Investment Account	$9,846,718

1117 3. Petitioners state that while Part 1 of the proposed Budget provides for $806,022 in excess of the 1936 Budget, the expenditures for the usual improvements to road and equipment are $818,536 less. The increase specified is due to increased payments on new equipment and improvements to road property necessary to the operation of the thirty new high speed freight locomotives.

4. The amount shown in said Exhibit "A" for new equipment is the initial payment of 25% of the cost of equipment, estimated to cost, in Part 1, $7,809,358 and in Part 2, $2,669,800. The remaining 75% of such cost it is proposed to finance through the sale of Equipment Trust Certificates. Parts 1 and 2 each provides for the construction of one thousand freight cars in the Milwaukee Shops

of the Trust Estate which Shops are modern and fully equipped and operated by an efficient organization by which can be constructed two thousand freight cars per annum at substantially lower out-of-pocket cost than if purchased from outside car builders, which construction work can be done without interfering with repairs to existing equipment and the Trustees are of the opinion it is in the interest of the Trust Estate, insofar as conditions permit, to maintain this shop organization and continue the construction of freight cars at the rate of about two thousand cars per year to be used in operating the railroad of the Trust Estate.

5. Petitioners further state that the expenditures under Part 1 of said proposed Budget, exclusive of expenditures for new equipment and expenditures necessary to the 1118 operation of the new freight locomotives, aggregate $5,497,333, $2,608,844 of which, or 47%, are for rail, ballast, bridge programs and the protection of the railroad track of the Trust Estate paralleling the Mississippi River against the consequences of work being done by the United States Government in connection with its inland waterway improvements. A substantial part of the item of expenditure of said $5,497,333, which, under the Accounting Rules of the Interstate Commerce Commission is chargeable to Investment Account, is for the replacement of facilities necessary in the maintenance of the property. The greater part of the expenditures for bridges is of this nature and other expenditures, as for example $50,425 expenditure for the replacement of worn out planking at important highway crossings with "Crown Rock" paving which has a life several times that of plank but costs about the same; replacements of water tanks, $38,318; paving floors and roads in and around shop buildings, $50,000; reconstructing telegraph and telephone lines, $10,918, bring the total of such expenditures to approximately $1,331,705, or about 25% of the total.

6. Your Petitioners are of the opinion that the proposed expenditures for which authorization of the Court is here sought are in the interest of the Trust Estate, its creditors and stockholders, and are conservative and necessary.

Wherefore, Petitioners pray that an order be entered authorizing total expenditures chargeable to Investment Account of $8,071,691, specified in Part 1, shown in Exhibit "A" hereof, with the privilege, if in the opinion of the

Trustees it should be necessary so to do, of carrying out some project, or projects, specified in Part 2 of said
1119 Exhibit, in preference to a project, or projects, specified in Part 1 of said Exhibit, the equivalent amount of the expenditure so made for said project, or projects, to be deducted from the amount of expenditure authorized for the projects specified in Part 1 of said Exhibit "A".

Henry A. Scandrett,
Walter J. Cummings,
George I. Haight,
Trustees,
By Henry A. Scandrett,
One of said Trustees.

O. W. Dynes and
C. S. Jefferson,
Attorneys for Trustees.

1120 United States of America
Northern District of Illinois } ss.
Eastern Division

Henry A. Scandrett, being duly sworn, deposes and says that he is one of the Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company; that he has read the foregoing petition and knows the contents thereof and that the facts alleged therein are true as he verily believes.

Henry A. Scandrett.

Subscribed and Sworn to before me this 16th day of January, 1937.

R. W. Spangenberg,
(Seal) *Notary Public, Cook County, Illinois.*

My Commission Expires June 7, 1939.

Filed ....., 1937. ....., Clerk.

Exhibit "A."

EXHIBIT "A"
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY
Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees
Improvement Budget For 1937

DESCRIPTION	Part 1 — Expenditures which are considered necessary (1) for safety; (2) to provide facilities required to maintain schedules and service comparable with that of competing roads; (3) to comply with requirements of State or Federal Authorities; (4) to produce annual savings or increase in net revenue of 50% or more of their cost; (5) to complete projects authorized in 1936 amounting to $407,005. in Investment and $74,993. in Operating Expenses.			Part 2 — Expenditures which with increased business are necessary for efficient operation.			TOTALS		
	Estimated Costs			Estimated Costs			Estimated Costs		
	Investment Account	Operating Expenses Less Salvage	Total Less Salvage	Investment Account	Operating Expenses Less Salvage	Total Less Salvage	Investment Account	Operating Expenses Less Salvage	Total Less Salvage
ROAD AND EXISTING EQUIPMENT.									
Rail Program:—30,333 gross tons new rail or 161.15 miles and 12,959 gross tons second hand rail or 80.89 miles including fastenings, turnouts, tie plates, rail anchors, additional ties, incidental signal work and all labor of application									
Part 1—30,333 gross tons new rail and 8,007 gross tons second hand rail	$ 606,137.	$ 674,892.	$1,281,029.•	$ —	$ —	$ —	$606,137.	$674,892.	$1,2
Part 2—10,000 gross tons new rail and 4,952 gross tons second hand rail	—	—	—	312,747.	319,523.	632,270.Ø	312,747.	319,523.	6
Tie plates, rail anchors and R. R. crossings to be installed outside of the relay rail limits including all labor of application	573,908.	131,777.	705,685.▲	—	—	—	573,908.	131,777.	7
Ballast Program:—595,286 cu. yds. or 297.92 miles.									
Part 1— 324,940 cu. yds. or 212.77 miles.	177,382.	204,321.	381,703.	—	—	—	177,382.	204,321.	3
Part 2— 170,345 cu. yds. or 85.15 miles.	—	—	—	53,722.	81,022.	134,744.	53,722.	81,022.	1
Bridge Program:—719 structures	1,104,802.	171,876.	1,276,678.	—	—	—	1,104,802.	171,876.	1,2
Highway Grade Separations	30,860.	6,440.	37,300.	—	—	—	30,860.	6,440.	
Rip Rap Embankment on account of Mississippi River-Government Dams Nos. 9, 10 and 11	146,615.	—	146,615.	—	—	—	146,615.	—	
Construct connection with Great Northern near Monroe, Washington. (This to enable the Milwaukee to use approximately one-half mile of Great Northern track and to abandon its own track and avoid reconstruction of bridges estimated to cost $105,000.)	58,300.	13,419.	71,719.	—	—	—	58,300.	13,419.	
Replace turntables, extend enginehouse stalls, strengthen bridges, etc., necessary to the operation of the 30 new freight locomotives to be acquired	600,000.	45,150.	645,150.	—	—	—	600,000.	45,150.	
Purchase and install 32 volt D. C. equipment for servicing air conditioned cars having Safety Carrier Steam System at Western Avenue, Milwaukee Coach Yard, Minneapolis Coach Yard and Tacoma Coach Yard	79,898.	—	79,898.	—	—	—	79,898.	—	
Construct 18 car capacity fruit house at St. Paul	—	—	—	102,000.	—	102,000.	102,000.	—	
Extend present 18 car capacity fruit house to 36 car capacity at Minneapolis	—	—	—	91,000.	6,300.	97,300.	91,000.	6,300.	
Equip 220 old freight cars for use as work equipment for 1937 roadway gangs	65,000.	19,000.	84,000.	—	—	—	65,000.	19,000.	
Air condition existing equipment—45 units. (See report of Committee on Equipment Requirements for 1937, Part II, Passenger Train Cars)	382,500.	22,500.	405,000.	—	—	—	382,500.	22,500.	
Convert steel tourist cars to coach-mail-express cars—5 units. (See report of Committee on Equipment Requirements for 1937, Part II, Passenger Train Cars.)	30,000.	—	30,000.	—	—	—	30,000.	—	
Apply boosters to L-3 power—7 units. (See report of Committee on Equipment Requirements for 1937, Part I, Locomotives)	—	—	—	80,850.	4,900.	85,750.	80,850.	4,900.	
Construct snow fighting equipment consisting of 14 flangers, 2 cut wideners, 35 plows and 2 Russell double track plows.	—	—	—	52,629.	—	52,629.	52,629.	—	
Other Improvements to existing equipment	335,748.	69,448.	405,196.	39,293.	13,434.	52,727.	375,041.	82,882.	
Ordinary Improvements:									
Class 1—Widening cuts and fills, roadbed protection, tiling wet cuts, minor line changes, etc	103,726.	743.Cr	102,983.	53,928.	1,433.Cr	52,495.	157,654.	2,176.Cr	155
5—Tunnels	32,523.	7,450.	39,973.	—	—	—	32,523.	7,450.	39
8—Grade crossings, crossing signals and renewal of overhead crossings	182,896.	28,016.	210,912.	10,477.	125.	10,602.	193,373.	28,141.	221
10—Industrial and other tracks	165,914.	16,897.	182,811.	171,785.	6,776.	178,561.	337,699.	23,673.	361
12—Signals and interlocking plants	109,770.	8,457.	118,227.	24,191.	373.	24,564.	133,961.	8,830.	142
13—Telegraph and Telephone lines	29,534.	19,459.	48,993.	413.	15.	428.	29,947.	19,474.	49
14—Roadway machinery and tools	58,783.	—	58,783.	1,287.	—	1,287.	60,070.	—	60
15—Roadway buildings	13,862.	175.	14,037.	550.	—	550.	14,412.	175.	14
16—Fences and snowsheds	29,511.	225.	29,736.	—	—	—	29,511.	225.	29
17—Freight and passenger stations, platforms, stockyards and other station facilities	268,182.	26,275.	294,457.	170.	105.	275.	268,352.	26,380.	294
19—Fuel stations and appurtenances	5,878.	149.	6,027.	1,439.	63.	1,502.	7,317.	212.	7
20—Water stations and appurtenances	117,273.	1,338.	118,611.	12,409.	547.Cr	11,862.	129,682.	791	130
21—Shop buildings, enginehouses and appurtenances	315,814.	21,094.	336,908.	867.	—	867.	316,681.	21,094.	337

Exhibit "A."

EXHIBIT "A"
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY
Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees
Improvement Budget For 1937

DESCRIPTION	Part 1 — Expenditures which are considered necessary (1) for safety; (2) to provide facilities required to maintain schedules and service comparable with that of competing roads; (3) to comply with requirements of State or Federal Authorities; (4) to produce annual savings or increase in net revenue of 50% or more of their cost; (5) to complete projects authorized in 1936 amounting to $407,005. in Investment and $74,993. in Operating Expenses.			Part 2 — Expenditures which with increased business are necessary for efficient operation.			TOTALS		
	Estimated Costs			Estimated Costs			Estimated Costs		
	Investment Account	Operating Expenses Less Salvage	Total Less Salvage	Investment Account	Operating Expenses Less Salvage	Total Less Salvage	Investment Account	Operating Expenses Less Salvage	Total Less Salvage
UIPMENT.									
tons new rail or 161.15 miles and 12,959 gross tons second hand rail or 80.89 miles uts, tie plates, rail anchors, additional ties, incidental signal work and all labor of									
ew rail and 8,007 gross tons second hand rail	$ 606,137.	$ 674,892.	$1,281,029.•	$ —	$ —	$ —	$606,137.	$ 674,892.	$1,281,029.•
ew rail and 4,952 gross tons second hand rail	—	—	—	312,747.	319,523.	632,270.Ø	312,747.	319,523.	632,270.Ø
d R. R. crossings to be installed outside of the relay rail limits including all labor of	573,908.	131,777.	705,685.▲	—	—	—	573,908.	131,777.	705,685.▲
u. yds. or 297.92 miles.									
u. yds. or 212.77 miles.	177,382.	204,321.	381,703.	—	—	—	177,382.	204,321.	381,703.
u. yds. or 85.15 miles.	—	—	—	53,722.	81,022.	134,744.	53,722.	81,022.	134,744.
ures	1,104,802.	171,876.	1,276,678.	—	—	—	1,104,802.	171,876.	1,276,678.
	30,860.	6,440.	37,300.	—	—	—	30,860.	6,440.	37,300.
ount of Mississippi River Government Dams Nos. 9, 10 and 11	146,615.	—	146,615.	—	—	—	146,615.	—	146,615.
Great Northern near Monroe, Washington. (This to enable the Milwaukee to use e of Great Northern track and to abandon its own track and avoid reconstruction of $105,000.)	58,300.	13,419.	71,719.	—	—	—	58,300.	13,419.	71,719.
enginehouse stalls, strengthen bridges, etc., necessary to the operation of the 30 new acquired	600,000.	45,150.	645,150.	—	—	—	600,000.	45,150.	645,150.
D. C. equipment for servicing air conditioned cars having Safety Carrier Steam System ukee Coach Yard, Minneapolis Coach Yard and Tacoma Coach Yard	79,898.	—	79,898.	—	—	—	79,898.	—	79,898.
uit house at St. Paul	—	—	—	102,000.	—	102,000.	102,000.	—	102,000.
ty fruit house to 36 car capacity at Minneapolis	—	—	—	91,000.	6,300.	97,300.	91,000.	6,300.	97,300.
r use as work equipment for 1937 roadway gangs	65,000.	19,000.	84,000.	—	—	—	65,000.	19,000.	84,000.
ment—45 units. (See report of Committee on Equipment Requirements for 1937, Cars)	382,500.	22,500.	405,000.	—	—	—	382,500.	22,500.	405,000.
coach-mail-express cars—5 units. (See report of Committee on Equipment Require- assenger Train Cars.)	30,000.	—	30,000.	—	—	—	30,000.	—	30,000.
r—7 units. (See report of Committee on Equipment Requirements for 1937, Part I,	—	—	—	80,850.	4,900.	85,750.	80,850.	4,900.	85,750.
pment consisting of 14 flangers, 2 cut wideners, 35 plows and 2 Russell double track plows.	—	—	—	52,629.	—	52,629.	52,629.	—	52,629.
ting equipment	335,748.	69,448.	405,196.	39,293.	13,434.	52,727.	375,041.	82,882.	457,923.
nd fills, roadbed protection, tiling w at cuts, minor line changes, etc	103,726.	743.Cr	102,983.	53,928.	1,433.Cr	52,495.	157,654.	2,176.Cr	155,478.
	32,523.	7,450.	39,973.	—	—	—	32,523.	7,450.	39,973.
, crossing signals and renewal of overhead crossings	182,896.	28,016.	210,912.	10,477.	125.	10,602.	193,373.	28,141.	221,514.
other tracks	165,914.	16,897.	182,811.	171,785.	6,776.	178,561.	337,699.	23,673.	361,372.
erlocking plants	109,770.	8,457.	118,227.	24,191.	373.	24,564.	133,961.	8,830.	142,791.
Telephone lines	29,534.	19,459.	48,993.	413.	15.	428.	29,947.	19,474.	49,421.
inery and tools	58,783.	—	58,783.	1,287.	—	1,287.	60,070.	—	60,070.
ings	13,862.	175.	14,037.	550.	—	550.	14,412.	175.	14,587.
rwabeds	29,511.	225.	29,736.	—	—	—	29,511.	225.	29,736.
senger stations, platforms, stockyards and other station facilities	268,182.	26,275.	294,457.	170.	105.	275.	268,352.	26,380.	294,732.
nd appurtenances	5,878.	149.	6,027.	1,439.	63.	1,502.	7,317.	212.	7,529.
and appurtenances	117,273.	1,338.	118,611.	12,409.	547.Cr	11,862.	129,682.	791	130,473.
	315,814.	21,094.	336,908.	867.	—	867.	316,681.	21,094.	337,775.

ROAD AND EXISTING EQUIPMENT.								
Rail Program:—30,333 gross tons new rail or 161.15 miles and 12,959 gross tons second hand rail or 89.89 miles including fastenings, turnouts, tie plates, rail anchors, additional ties, incidental signal work and all labor of application								
Part 1—20,333 gross tons new rail and 8,007 gross tons second hand rail	$ 606,137.	$ 674,892.	$1,281,029.*	$ —	$ —	$ —	$606,137.	$ 674,892.	$1,281,029.*
Part 2—10,000 gross tons new rail and 4,952 gross tons second hand rail	—	—	—	312,747.	319,523.	632,270.Ø	312,747.	319,523.	632,270.Ø
Tie plates, rail anchors and R. R. crossings to be installed outside of the relay rail limits including all labor of application	573,908.	131,777.	705,685.▲	—	—	—	573,908.	131,777.	705,685.▲
Ballast Program:—595,285 cu. yds. or 297.92 miles.									
Part 1— 424,940 cu. yds. or 212.77 miles	177,382.	204,321.	381,703.	—	—	—	177,382.	204,321.	381,703.
Part 2— 170,345 cu. yds. or 85.15 miles	—	—	—	53,722.	81,022.	134,744.	53,722.	81,022.	134,744.
Bridge Program:—719 structures	1,104,802.	171,876.	1,276,678.	—	—	—	1,104,802.	171,876.	1,276,678.
Highway Grade Separations	30,880.	6,440.	37,300.	—	—	—	30,880.	6,440.	37,300.
Rip Rap Embankment on account of Mississippi River Government Dams Nos. 9, 10 and 11	146,615.	—	146,615.	—	—	—	146,615.	—	146,615.
Construct connection with Great Northern near Monroe, Washington. (This to enable the Milwaukee to use approximately one-half mile of Great Northern track and to abandon its own track and avoid reconstruction of bridges estimated to cost $105,000.)	58,300.	13,419.	71,719.	—	—	—	58,300.	13,419.	71,719.
Replace turntables, extend enginehouse stalls, strengthen bridges, etc., necessary to the operation of the 30 new freight locomotives to be acquired	600,000.	45,150.	645,150.	—	—	—	600,000.	45,150.	645,150.
Purchase and install 32 volt D. C. equipment for servicing air conditioned cars having Safety Carrier Steam System at Western Avenue, Milwaukee Coach Yard, Minneapolis Coach Yard and Tacoma Coach Yard	79,898.	—	79,898.	—	—	—	79,898.	—	79,898.
Construct 18 car capacity fruit house at St. Paul	—	—	—	102,000.	—	102,000.	102,000.	—	102,000.
Extend present 18 car capacity fruit house to 36 car capacity at Minneapolis	—	—	—	91,000.	6,300.	97,300.	91,000.	6,300.	97,300.
Equip 220 old freight cars for use as work equipment for 1937 roadway gangs	65,000.	19,000.	84,000.	—	—	—	65,000.	19,000.	84,000.
Air condition existing equipment—45 units. (See report of Committee on Equipment Requirements for 1937, Part II, Passenger Train Cars)	382,500.	22,500.	405,000.	—	—	—	382,500.	22,500.	405,000.
Convert steel tourist cars to coach-mail-express cars—5 units. (See report of Committee on Equipment Requirements for 1937, Part II, Passenger Train Cars.)	30,000.	—	30,000.	—	—	—	30,000.	—	30,000.
Apply boosters to L-3 power—7 units. (See report of Committee on Equipment Requirements for 1937, Part I, Locomotives)	—	—	—	80,850.	4,900.	85,750.	80,850.	4,900.	85,750.
Construct snow fighting equipment consisting of 14 flangers, 2 cut wideners, 35 plows and 2 Russell double track plows.	—	—	—	52,629.	—	52,629.	52,629.	—	52,629.
Other Improvements to existing equipment	335,748.	69,448.	405,196.	30,263.	13,434.	52,727.	375,041.	82,882.	457,923.
Ordinary Improvements:									
Class 1—Widening cuts and fills, roadbed protection, tiling wet cuts, minor line changes, etc	103,726.	743.Cr	102,983.	53,928.	1,433.Cr	52,495.	157,654.	2,176.Cr	155,478.
5—Tunnels	32,523.	7,450.	39,973.	—	—	—	32,523.	7,450.	39,973.
9—Grade crossings, crossing signals and renewal of overhead crossings	182,896.	28,016.	210,912.	10,477.	125.	10,602.	193,373.	28,141.	221,514.
10—Industrial and other tracks	165,914.	16,897.	182,811.	171,785.	6,776.	178,561.	337,699.	23,673.	361,372.
12—Signals and interlocking plants	109,770.	8,457.	118,227.	24,191.	373.	24,564.	133,961.	8,830.	142,791.
13—Telegraph and Telephone lines	29,534.	19,450.	48,993.	413.	15.	428.	29,947.	19,474.	49,421.
14—Roadway machinery and tools	58,783.	—	58,783.	1,287.	—	1,287.	60,070.	—	60,070.
15—Roadway buildings	13,862.	175.	14,037.	550.	—	550.	14,412.	175.	14,587.
16—Fences and snowsheds	29,511.	225.	29,736.	—	—	—	29,511.	225.	29,736.
17—Freight and passenger stations, platforms, stockyards and other station facilities	268,182.	26,275.	294,457.	170.	105.	275.	268,352.	26,380.	294,732.
19—Fuel stations and appurtenances	5,878.	149.	6,027.	1,439.	63.	1,502.	7,317.	212.	7,529.
20—Water stations and appurtenances	117,273.	1,338.	118,611.	12,409.	547.Cr	11,862.	129,682.	791.	130,473.
21—Shop buildings, enginehouses and appurtenances	315,814.	21,094.	336,908.	867.	—	867.	316,681.	21,094.	337,775.
22—Shop machinery and tools	289,501.	111.	289,612.	90,470.	585.Cr	89,885.	379,971.	474.Cr	379,497.
23—Electric power plants, substations, transmission and distribution lines	151,201.	925.	152,126.	—	—	—	151,201.	925.	152,126.
28—Assessments for public improvements	20,000.	—	20,000.	—	—	—	20,000.	—	20,000.
34—Other improvements	11,815.	—	11,815.	—	—	—	11,815.	—	11,815.
TOTAL—ROAD AND EXISTING EQUIPMENT	6,607.333.	1,488,651.	7,585,984.	1,100,227.	430,071.	1,530,298.	7,107,560.	1,918,722.	9,116,282.
NEW EQUIPMENT (See reports of Committees on Equipment Requirements for 1937.)									
Locomotives—30 heavy high speed freight and 1 Hiawatha passenger	$ 4,251,358.	1,071,358.	—	1,071,358.	—	—	1,071,358.	—	1,071,358.
Passenger Cars—20 coaches, 7 dining cars, 5 coaches and baggage cars, 1 mail and express car	1,103,000.	278,000.	—	278,000.	—	—	278,000.	—	278,000.
Freight Cars—500—50' 6" steel sheathed 50 ton automobile cars and 500—50 ton all steel hopper cars	2,455,000.	625,000.	—	625,000.	—	—	625,000.	—	625,000.
Freight Cars—1000—48' 6" 70 ton composite gondolas and 22—30 cu. yd. capacity air dump cars*	2,669,900.	—	—	—	674,800.	674,800.	674,800.	—	674,800.
Total	10,479,158.								
To be financed through sale of equipment trust certificates	7,830,000.								
To be financed out of Railroad Company funds	2,649,158.	1,974,358.	—	1,974,358.	674,800.	—	674,800.	2,649,158.	—	2,649,158.
TOTAL BUDGET TO BE PROVIDED FROM RAILROAD COMPANY FUNDS	8,071,691.	1,488,651.	9,560,342.	1,775,027.	430,071.	2,205,098.	9,846,718.	1,918,722.	11,765,440.

* Air dump cars not included in reports of Committees on Equipment requirements for 1937.
* Includes the cost of second hand rail and other track material amounting to $51,195. in Investment and $68,606. in Operating Expenses.
▲ Includes the cost of second hand track material amounting to $99,620. in Investment and $2,730. in Operating Expenses.
Ø Includes the cost of second hand rail and other track material amounting to $41,165. in Investment and $53,048. in Operating Expenses.
Many of the other items include an inconsequential amount of second hand material.

1122 Endorsed: District Court of United States. * * (Caption—60463) * * Petition of Trustee for Approval of Improvement Budget for Year 1937. Filed Jan. 21, 1937. Henry W. Freeman, Clerk. O. W. Dynes, C. S. Jefferson Attorneys for Trustees, 888 Union Station Chicago, Illinois.

1122 Endorsed: District Court of United States. * * (Caption—60463) * * Petition of Trustee for Approval of Improvement Budget for Year 1937. Filed Jan. 21, 1937. Henry W. Freeman, Clerk. O. W. Dynes, C. S. Jefferson Attorneys for Trustees, 888 Union Station Chicago, Illinois.

1123 And afterwards, to wit, on the 21st day of January, 1937, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Entered Jan. 21, 1937.

1124 Order No. 194.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER APPROVING IMPROVEMENT BUDGET FOR YEAR 1937.

This day coming on to be heard the verified petition of the Trustees for an order approving the proposed Improvement Budget of the property of the Trust Estate for the year 1937, prepared under the direction of the Trustees thereof, and it appearing that a copy of said petition, to which was attached as an exhibit a Summary of the proposed Improvement Budget, has been served on all parties to this proceeding entitled to notice, and that a copy of said Summary has been filed herein, and the Court having considered the petition, heard the statements of Counsel, and being fully advised in the premises, it is

Ordered, that the proposed expenditures of $8,071,691 chargeable to Investment Account, as specified in Part I of the Summary of the Trustees' proposed Improvement Budget for the year 1937 on file herein, are approved.

Ordered, that if in the judgment of the Trustees it becomes necessary to carry out some project, or projects, specified in Part 2 of said Summary of the Trustees' proposed Improvement Budget, in preference to some project, or projects, specified in Part I in said Budget, the Trustees are authorized to exercise such preference, the equivalent amount of the expenditures so made for carrying out said project, or projects, to be deducted from the amount of the expenditure authorized for projects specified in Part I of said Improvement Budget.

The Court reserves full right, at any time, by such further orders in the premises as the Court may deem proper, to amend, modify or otherwise change the present order, and the orders of Court herein shall not be deemed to

include authority in respect of expenditures for new cars, specified in Part I of the Summary of the Trustees proposed Improvement Budget for the year 1937, on file herein, until this Court shall have approved, by further order, such expenditures.

Enter:

James H. Wilkerson,
District Judge.

Dated January 21, 1937.

Filed June 29, 1937.

1175 And on, to wit, the 29th day of June, A. D. 1937 came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Petition for Approval of Expenditures for Additions and Betterments During the Last Half of the Year 1937 in words and figures following, to wit:

1176 Petition for Order No. .....

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

PETITION OF TRUSTEES FOR APPROVAL OF EXPENDITURES FOR ADDITIONS AND BETTERMENTS TO BE ADDED TO THE PROPERTY OF THE TRUST ESTATE DURING THE LAST HALF OF THE YEAR 1937 AGGREGATING $1,491,397.

The petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, respectfully represents:

1. There was presented to the Court on January 21, 1937, Trustees' petition for approval of Trustees' Improvement Budget for the year 1937 with a Summary of contemplated Budget requirements for the year 1937 attached to said petition as Exhibit "A", and on January 21, 1937, this Court entered its order approving expenditures to be made during the year 1937 in the sum of $8,071,691 chargeable to Investment Account as specified in Part I of said Summary. For convenient reference there is submitted herewith, as Exhibit "A", and hereby made a part hereof,

a copy of said Summary of Budget requirements for the year 1937 showing, among other things, Part 2 expenditures for projects which the Trustees, on January 21, 1937, believed should be carried out during the last half of the year 1937 if justified by business conditions, and showing contemplated initial payments for new equipment then in contemplation, in an aggregate amount of $1,775,027.

1177 2. Since the presentation of said former petition, which was heard and granted as to Part I of the Budget requirements on January 21, 1937, the Trustees have ascertained that certain additions and betterments, expenditures for which aggregated $326,371, which were included in the then contemplated aggregate of $1,775,027 for the last half of 1937, can be cancelled or deferred consistently with the interests of the Trust Estate. Since January 21, 1937, the Trustees also have found it to be in the interest of the Trust Estate to advance from the last half of the year 1937 two projects covered by Part 2 of said Budget and apply them during the first half of the year 1937. Those two projects are the laying and ballasting of 3065 tons of new rail on 16.85 miles of main line between Milwaukee and LaCrosse, in the State of Wisconsin, and the applying of 2 feed water heaters to 2 L-3 engines, at an aggregate cost of $82,259, which is being done conformably with order of this Court entered June 11, 1937. These several changes reduce from $1,775,027 to $1,366,397 the cost of additions and betterments which on January 21, 1937, the Trustees believed should be carried out during the last half of the year 1937 if business should justify. This reduction, aggregating $408,630, was effected by making reductions in the Investment Account items shown in the first column under the heading "Part 2" of said Exhibit "A" as follows:

1178 **Part 2**

Investment Account (1)	Reduced by (2)	Result of Reductions (3)
$ 312,747	$220,690	$ 92,057
53,722	39,019	14,703
102,000	102,000	—
91,000	—	91,000
80,850	—	80,850
52,629	—	52,629
39,293	13,000	26,293
53,928	—	53,928
10,477	—	10,477
171,785	1,121	170,664
24,191	—	24,191
413	—	413
1,287	—	1,287
550	—	550
170	—	170
1,439	—	1,439
12,409	—	12,409
867	—	867
90,470	—	90,470
674,800	32,800	642,000
Totals—$1,775,027	$408,630	$1,366,397

Since the presentation of said former petition on January 21, 1937, the Trustees have further found that it will be in the interest of the Trust Estate to provide for acquiring one S-1 type passenger steam locomotive, at a cost of $125,000, for use on the System during and after
1179 the last half of the year 1937, thereby increasing from $1,366,397 to $1,491,397 the additional expenditures for additions and betterments chargeable to Investment Account to be made during the year 1937.

3. The Trustees believe present and prospective business of the railroad of the Trust Estate require placing on the property during the last half of 1937 additions and betterments the figures of cost of which are shown in the foregoing tabulation in relation to the projects specified in Exhibit "A" and the $125,000 item specified in the preceding paragraph.

4. Your Petitioners are of the opinion that the proposed additional expenditures to be made for additions and betterments so to be added to the property for use thereon during and after the last half of the year 1937, for which authorization of the Court is here sought, would be made in the interest of, and to the benefit of, the Trust Estate, its creditors and stockholders and would be conservative and necessary expenditures.

5. Your Petitioners will keep a detailed record of said expenditures, if made, and of said additions and betterments, if applied to the various parts of the Trust Estate, in form such as will show to which portion of the railroad of the Trust Estate each addition and betterment is applied or allocated.

Wherefore, your Petitioners pray that an order be entered authorizing total expenditures of $1,491,397, chargeable to Investment Account, as hereinabove set forth, for additions and betterments to the property of the Trust Estate to be added during the last half of the year 1937 and to be paid for out of funds that currently will be in the hands of the Trustees derived from operation of the Trust Estate.

Henry A. Scandrett,
Walter J. Cummings,
George I. Haight,
Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
By Henry A. Scandrett,
One of said Trustees.

O. W. Dynes & C. S. Jefferson,
Attorneys for Trustees.

1180 United States of America,
Northern District of Illinois, } ss.
Eastern Division.

Henry A. Scandrett, being duly sworn, deposes and says that he is one of the Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company; that he has read the foregoing petition and knows the contents thereof and that the facts alleged therein are true as he verily believes.

Henry A. Scandrett.

Subscribed and Sworn to before me this 22nd day of June, 1937.

R. W. Spangenberg,
(Seal) *Notary Public, Cook County, Illinois.*

My Commission Expires June 7, 1939.

Filed ....., 1937 ..... Clerk.

Exhibit "A."

EXHIBIT "A"
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY
Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees
Improvement Budget For 1937

DESCRIPTION	Part 1 — Expenditures which are considered necessary (1) for safety; (2) to provide facilities required to maintain schedules and service comparable with that of competing roads; (3) to comply with requirements of State or Federal Authorities; (4) to produce annual savings or increase in net revenue of 50% or more of their cost; (5) to complete projects authorized in 1936 amounting to $407,005. in Investment and $74,893. in Operating Expenses. Estimated Costs			Part 2 — Expenditures which with increased business are necessary for efficient operation. Estimated Costs			Inv A
	Investment Account	Operating Expenses Less Salvage	Total Less Salvage	Investment Account	Operating Expenses Less Salvage	Total Less Salvage	
ROAD AND EXISTING EQUIPMENT.							
Rail Program:—30,333 gross tons new rail or 161.15 miles and 12,959 gross tons second hand rail or 89.89 miles including fastenings, turnouts, tie plates, rail anchors, additional ties, incidental signal work and all labor of application							
Part 1—20,333 gross tons new rail and 8,007 gross tons second hand rail	$ 606,137.	$ 674,892.	$1,281,029.•	$ —	$ —	$ —	$6
Part 2—10,000 gross tons new rail and 4,952 gross tons second hand rail	—	—	—	312,747.	319,523.	632,270.Ø	3
Tie plates, rail anchors and R. R. crossings to be installed outside of the relay rail limits including all labor of application	573,908.	131,777.	705,685.▲	—	—	—	5
Ballast Program:—595,285 cu. yds. or 297.92 miles							
Part 1— 424,940 cu. yds. or 212.77 miles	177,382.	204,321.	381,703.	—	—	—	1
Part 2— 170,345 cu. yds. or 85.15 miles	—	—	—	53,722.	81,022.	134,744.	
Bridge Program:—719 structures	1,104,802.	171,876.	1,276,678.	—	—	—	1,1
Highway Grade Separations	30,860.	6,440.	37,300.	—	—	—	
Rip Rap Embankment on account of Mississippi River Government Dams Nos. 9, 10 and 11	146,615.	—	146,615.	—	—	—	1
Construct connection with Great Northern near Monroe, Washington. (This to enable the Milwaukee to use approximately one-half mile of Great Northern track and to abandon its own track and avoid reconstruction of bridges estimated to cost $105,000.)	58,300.	13,419.	71,719.	—	—	—	
Replace turntables, extend enginehouse stalls, strengthen bridges, etc., necessary to the operation of the 30 new freight locomotives to be acquired	600,000.	45,150.	645,150.	—	—	—	6
Purchase and install 32 volt D. C. equipment for servicing air conditioned cars having Safety Carrier Steam System at Western Avenue, Milwaukee Coach Yard, Minneapolis Coach Yard and Tacoma Coach Yard	79,898.	—	79,898.	—	—	—	
Construct 18 car capacity fruit house at St. Paul	—	—	—	102,000.	—	102,000.	1
Extend present 15 car capacity fruit house to 36 car capacity at Minneapolis	—	—	—	91,000.	6,300.	97,300.	
Equip 220 old freight cars for use as work equipment for 1937 roadway gangs	65,000.	19,000.	84,000.	—	—	—	
Air condition existing equipment—45 units. (See report of Committee on Equipment Requirements for 1937, Part II, Passenger Train Cars)	382,500.	22,500.	405,000.	—	—	—	3
Convert steel tourist cars to coach-mail-express cars—5 units. (See report of Committee on Equipment Requirements for 1937, Part II, Passenger Train Cars.)	30,000.	—	30,000.	—	—	—	
Apply boosters to L-3 power—7 units. (See report of Committee on Equipment Requirements for 1937, Part I, Locomotives)	—	—	—	80,850.	4,900.	85,750.	
Construct snow fighting equipment consisting of 14 flangers, 2 cut wideners, 35 plows and 2 Russell double track plows	—	—	—	52,629.	—	52,629.	
Other Improvements to existing equipment	335,748.	69,448.	405,196.	39,293.	13,434.	52,727.	3
Ordinary Improvements:							
Class 1—Widening cuts and fills, roadbed protection, tiling wet cuts, minor line changes, etc	103,726.	743.Cr	102,983.	53,928.	1,433.Cr	52,495.	1
5—Tunnels	32,523.	7,450.	39,973.	—	—	—	
8—Grade crossings, crossing signals and renewal of overhead crossings	182,896.	28,016.	210,912.	10,477.	125.	10,602.	1
10—Industrial and other tracks	165,914.	16,897.	182,811.	171,785.	6,776.	178,561.	3
12—Signals and interlocking plants	109,770.	8,457.	118,227.	24,191.	373.	24,564.	1
13—Telegraph and Telephone lines	29,534.	19,459.	48,993.	413.	15.	428.	
14—Roadway machinery and tools	58,783.	—	58,783.	1,287.	—	1,287.	
15—Roadway buildings	13,862.	175.	14,037.	550.	—	550.	
16—Fences and snowsheds	29,511.	225.	29,736.	—	—	—	
17—Freight and passenger stations, platforms, stockyards and other station facilities	268,182.	26,275.	294,457.	170.	105.	275.	2
19—Fuel stations and appurtenances	5,878.	149.	6,027.	1,439.	63.	1,502.	
20—Water stations and appurtenances	117,273.	1,338.	118,611.	12,409.	547.Cr	11,862.	1
	315,814.	21,094.	336,908.	867.	—	867	3

Exhibit "A."

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EXHIBIT "A"
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY
Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees
Improvement Budget For 1937

DESCRIPTION	Part 1 — Expenditures which are considered necessary (1) for safety; (2) to provide facilities required to maintain schedules and service comparable with that of competing roads; (3) to comply with requirements of State or Federal Authorities; (4) to produce annual savings or increase in net revenue of 50% or more of their cost; (5) to complete projects authorised in 1936 amounting to $407,005. in Investment and $74,893. in Operating Expenses. Estimated Costs			Part 2 — Expenditures which with increased business are necessary for efficient operation. Estimated Costs			TOTALS Estimated Costs		
	Investment Account	Operating Expenses Less Salvage	Total Less Salvage	Investment Account	Operating Expenses Less Salvage	Total Less Salvage	Investment Account	Operating Expenses Less Salvage	Total Less Salvage
UIPMENT.									
tons new rail or 161.15 miles and 12,959 gross tons second hand rail or 89.89 miles uts, tie plates, rail anchors, additional ties, incidental signal work and all labor of									
ew rail and 8,007 gross tons second hand rail	$ 606,137.	$ 674,892.	$1,281,029.•	$ —	$ —	$ —	$606,137.	$ 674,892.	$1,281,029.•
ew rail and 4,952 gross tons second hand rail	—	—	—	312,747.	319,523.	632,270.Ø	312,747.	319,523.	632,270.Ø
d R. R. crossings to be installed outside of the relay rail limits including all labor of	573,908.	131,777.	705,685.▲	—	—	—	573,908.	131,777.	705,685.▲
. yds. or 297.92 miles									
. yds. or 212.77 miles	177,382.	204,321.	381,703.	—	—	—	177,382.	204,321.	381,703.
. yds. or 85.15 miles	—	—	—	53,722.	81,022.	134,744.	53,722.	81,022.	134,744.
ures	1,104,802.	171,876.	1,276,678.	—	—	—	1,104,802.	171,876.	1,276,678.
	30,860.	6,440.	37,300.	—	—	—	30,860.	6,440.	37,300.
ount of Mississippi River Government Dams Nos. 9, 10 and 11	146,615.	—	146,615.	—	—	—	146,615.	—	146615.
Great Northern near Monroe, Washington. (This to enable the Milwaukee to use e of Great Northern track and to abandon its own track and avoid reconstruction of $105,000.)	58,300.	13,419.	71,719.	—	—	—	58,300.	13,419.	71,719.
nginehouse stalls, strengthen bridges, etc., necessary to the operation of the 30 new equired	600,000.	45,150.	645,150.	—	—	—	600,000.	45,150.	645,150.
D. C. equipment for servicing air conditioned cars having Safety Carrier Steam System ukee Coach Yard, Minneapolis Coach Yard and Taccma Coach Yard	79,898.	—	79,898.	—	—	—	79,898.	—	79,898.
it house at St. Paul	—	—	—	102,000.	—	102,000.	102,000.	—	102,000.
y fruit house to 36 car capacity at Minneapolis	—	—	—	91,000.	6,300.	97,300.	91,000.	6,300.	97,300.
r use as work equipment for 1937 roadway gangs	65,000.	19,000.	84,000.	—	—	—	65,000.	19,000.	84,000.
ment—45 units. (See report of Committee on Equipment Requirements for 1937, ars)	382,500.	22,500.	405,000.	—	—	—	382,500.	22,500.	405,000.
coach-mail-express cars—5 units. (See report of Committee on Equipment Require- assenger Train Cars.)	30,000.	—	30,000.	—	—	—	30,000.	—	30,000.
—7 units. (See report of Committee on Equipment Requirements for 1937, Part I,	—	—	—	80,850.	4,900.	85,750.	80,850.	4,900.	85,750.
ment consisting of 14 flangers, 2 cut wideners, 35 plows and 2 Russell double track plows.	—	—	—	52,629.	—	52,629.	52,629.	—	52,629.
ing equipment	335,748.	69,448.	405,196.	39,293.	13,434.	52,727.	375,041.	82,882.	457,923.
d fills, roadbed protection, tiling wet cuts, minor line changes, etc	103,726.	743.Cr	102,983.	53,928.	1,433.Cr	52,495.	157,654.	2,176.Cr	155,478.
	32,523.	7,450.	39,973.	—	—	—	32,523.	7,450.	39,973.
crossing signals and renewal of overhead crossings	182,896.	28,016.	210,912.	10,477.	125.	10,602.	193,373.	28,141.	221,514.
ther tracks	165,914.	16,897.	182,811.	171,785.	6,776.	178,561.	337,699.	23,673.	361,372.
locking plants	109,770.	8,457.	118,227.	24,191.	373.	24,564.	133,961.	8,830.	142,791.
Telephone lines	29,534.	19,459.	48,993.	413.	15.	428.	29,947.	19,474.	49,421.
nery and tools	58,783.	—	58,783.	1,287.	—	1,287.	60,070.	—	60,070.
ngs	13,862.	175.	14,037.	550.	—	550.	14,412.	175.	14,587.
sheds	29,511.	225.	29,736.	—	—	—	29,511.	225.	29,736.
senger stations, platforms, stockyards and other station facilities	268,182.	26,275.	294,457.	170.	105.	275.	268,352.	26,380.	294,732.
d appurtenances	5,878.	149.	6,027.	1,439.	63.	1,502.	7,317.	212.	7,529.
and appurtenances	117,273.	1,338.	118,611.	12,409.	547.Cr	11,862.	129,682.	791.	130,473.
enginehouses and appurtenances	315,814.	21,094.	336,908.	867.	—	867.	316,681.	21,094.	337,775.
and tools	289,501.	111.	289,612.	90,470.	585.Cr	89,885.	379,971.	474.Cr	379,497.

Rail Program:—30,333 gross tons new rail or 161.15 miles and 12,950 gross tons second hand rail or 80.89 miles including fastenings, turnouts, tie plates, rail anchors, additional ties, incidental signal work and all labor of application									
Part 1—20,333 gross tons new rail and 8,007 gross tons second hand rail	$ 606,137.	$ 674,892.	$1,281,029.*	$ —	$ —	$ —	$606,137.	$ 674,892.	$1,281,029.*
Part 2—10,000 gross tons new rail and 4,952 gross tons second hand rail	—	—	—	312,747.	319,523.	632,270.Ø	312,747.	319,523.	632,270.Ø
Tie plates, rail anchors and R. R. crossings to be installed outside of the relay rail limits including all labor of application	573,908.	131,777.	705,685.▲	—	—	—	573,908.	131,777.	705,685.▲
Ballast Program:—895,285 cu. yds. or 297.92 miles.									
Part 1— 424,940 cu. yds. or 212.77 miles	177,382.	204,321.	381,703.	—	—	—	177,382.	204,321.	381,703.
Part 2— 170,345 cu. yds. or 85.15 miles	—	—	—	53,722.	81,022.	134,744.	53,722.	81,022.	134,744.
Bridge Program:—719 structures	1,104,802.	171,876.	1,276,678.	—	—	—	1,104,802.	171,876.	1,276,678.
Highway Grade Separations	30,860.	6,440.	37,300.	—	—	—	30,860.	6,440.	37,300.
Rip Rap Embankment on account of Mississippi River Government Dams Nos. 9, 10 and 11	146,615.	—	146,615.	—	—	—	30,860.	—	30,860.
Construct connection with Great Northern near Monroe, Washington. (This to enable the Milwaukee to use approximately one-half mile of Great Northern track and to abandon its own track and avoid reconstruction of bridges estimated to cost $105,000.)							146,615.	—	146,615.
Replace turntables, extend enginehouse stalls, strengthen bridges, etc., necessary to the operation of the 30 new freight locomotives to be acquired	58,300.	13,419.	71,719.	—	—	—	58,300.	13,419.	71,719.
Purchase and install 32 volt D. C. equipment for servicing air conditioned cars having Safety Carrier Steam System at Western Avenue, Milwaukee Coach Yard, Minneapolis Coach Yard and Tacoma Coach Yard	600,000.	45,150.	645,150.	—	—	—	600,000.	45,150.	645,150.
Construct 18 car capacity fruit house at St. Paul	79,898.	—	79,898.	—	—	—	79,898.	—	79,898.
Extend present 18 car capacity fruit house to 36 car capacity at Minneapolis	—	—	—	102,000.	—	102,000.	102,000.	—	102,000.
Equip 229 old freight cars for use as work equipment for 1937 roadway gangs	—	—	—	91,000.	6,300.	97,300.	91,000.	6,300.	97,300.
Air condition existing equipment—45 units. (See report of Committee on Equipment Requirements for 1937, Part II, Passenger Train Cars)	65,000.	19,000.	84,000.	—	—	—	65,000.	19,000.	84,000.
Convert steel tourist cars to coach-mail-express cars—5 units. (See report of Committee on Equipment Requirements for 1937, Part II, Passenger Train Cars.)	382,500.	22,500.	405,000.	—	—	—	382,500.	22,500.	405,000.
Apply boosters to L-3 power—7 units. (See report of Committee on Equipment Requirements for 1937, Part I, Locomotives)	30,000.	—	30,000.	—	—	—	30,000.	—	30,000.
Construct snow fighting equipment consisting of 14 flangers, 2 cut wideners, 35 plows and 2 Russell double track plows	—	—	—	80,850.	4,900.	85,750.	80,850.	4,900.	85,750.
Other Improvements to existing equipment	—	—	—	52,629.	—	52,629.	52,629.	—	52,629.
Ordinary Improvements:	335,748.	69,448.	405,196.	39,293.	13,434.	52,727.	375,041.	82,882.	457,923.
Class 1—Widening cuts and fills, roadbed protection, tiling wet cuts, minor line changes, etc	103,726.	743.Cr	102,983.	53,928.	1,433.Cr	52,495.	157,654.	2,176.Cr	155,478.
5—Tunnels	32,523.	7,450.	39,973.	—	—	—	32,523.	7,450.	39,973.
8—Grade crossings, crossing signals and renewal of overhead crossings	182,896.	28,016.	210,912.	10,477.	125.	10,602.	193,373.	28,141.	221,514.
10—Industrial and other tracks	165,914.	16,897.	182,811.	171,785.	6,776.	178,561.	337,699.	23,673.	361,372.
12—Signals and interlocking plants	109,770.	8,457.	118,227.	24,191.	373.	24,564.	133,961.	8,830.	142,791.
13—Telegraph and Telephone lines	29,584.	19,459.	48,993.	413.	15.	428.	29,947.	19,474.	49,421.
14—Roadway machinery and tools	56,783.	—	56,783.	1,287.	—	1,287.	60,070.	—	60,070.
15—Roadway buildings	13,862.	175.	14,037.	550.	—	550.	14,412.	175.	14,587.
16—Fences and snowsheds	29,511.	225.	29,736.	—	—	—	29,511.	225.	29,736.
17—Freight and passenger stations, platforms, stockyards and other station facilities	268,182.	26,275.	294,457.	170.	105.	275.	268,352.	26,380.	294,732.
19—Fuel stations and appurtenances	5,878.	149.	6,027.	1,439.	63.	1,502.	7,317.	212.	7,529.
20—Water stations and appurtenances	117,273.	1,338.	118,611.	12,409.	547.Cr	11,862.	129,682.	791.	130,473.
21—Shop buildings, enginehouses and appurtenances	315,814.	21,094.	336,908.	867.	—	867.	316,681.	21,094.	337,775.
22—Shop machinery and tools	289,501.	111.	289,612.	90,470.	585.Cr	89,885.	379,971.	474.Cr	379,497.
25—Electric power plants, substations, transmission and distribution lines	151,201.	925.	152,126.	—	—	—	151,201.	925.	152,126.
28—Assessments for public improvements	20,000.	—	20,000.	—	—	—	20,000.	—	20,000.
34—Other improvements	11,815.	—	11,815.	—	—	—	11,815.	—	11,815.
TOTAL—ROAD AND EXISTING EQUIPMENT	6,097,333.	1,448,651.	7,585,984.	1,100,227.	430,071.	1,530,298.	7,197,560.	1,918,722.	9,116,282.
NEW EQUIPMENT (See reports of Committees on Equipment Requirements for 1937.)									
Locomotives—30 heavy high speed freight and 1 Hiawatha passenger	$ 4,251,358.	1,071,358	—	1,071,358.	—	—	—	1,071,358.	—
Passengers Cars—20 coaches, 7 dining cars, 5 coaches and baggage cars, 1 mail and express car	1,103,000.	378,000.	—	278,000.	—	—	—	278,000.	—
Freight Cars—500—50' 6" steel sheathed 50 ton automobile cars and 500—50 ton all steel hopper cars	2,455,000.	625,000	—	625,000.	—	—	—	625,000.	—
Freight Cars—1000—48' 6" 70 tcn composite gondolas and 22—30 cu. yd. capacity air dump cars*....	2,669,800.	—	—	—	674,800.	—	674,800.	674,800.	—
Total	10,479,158.								
To be financed through sale of equipment trust certificates	8,830,000.								
To be financed out of Railroad Company funds	2,649,158.	1,074,358.	—	1,974,358.	674,800.	—	674,800.	2,649,158.	—
TOTAL BUDGET TO BE PROVIDED FROM RAILROAD COMPANY FUNDS	8,071,691.	1,488,651.	9,560,342.	1,775,027.	430,071.	2,205,098.	9,846,718.	1,918,722.	11,765,440.

* Air dump cars not included in reports of Committees on Equipment requirements for 1937.
• Includes the cost of second hand rail and other track material amounting to $51,195. in Investment and $68,606. in Operating Expenses.
▲ Includes the cost of second hand track material amounting to $99,620. in Investment and $2,730. in Operating Expenses.
Ø Includes the cost of second hand rail and other track material amounting to $41,165. in Investment and $53,048. in Operating Expenses.
Many of the other items include an inconsequential amount of second hand material.

1182 (Endorsed): District Court of United States • • (Caption—60463) • • Petition of Trustees for Approval of Expenditures for Additions and Betterments to Be Added to the Property of the Trust Estate During the Last Half of the Year 1937 Aggregating $1,491,397. Filed Jun 29 1937 Henry W. Freeman, Clerk. O. W. Dynes, C. S. Jefferson, Attorneys for Trustees 888 Union Station, Chicago, Illinois.

1182 (Endorsed): District Court of United States • • (Caption—60463) • • Petition of Trustees for Approval of Expenditures for Additions and Betterments to Be Added to the Property of the Trust Estate During the Last Half of the Year 1937 Aggregating $1,491,397. Filed Jun 29 1937 Henry W. Freeman, Clerk. O. W. Dynes, C. S. Jefferson, Attorneys for Trustees 888 Union Station, Chicago, Illinois.

1183 And afterwards, to wit, on the 29th day of June, A. D. 1937, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit: Entered June 29, 1937.

1184 Order No. 243.

IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—60463) • •

ORDER APPROVING EXPENDITURES FOR ADDITIONS AND BETTERMENTS TO BE ADDED TO THE PROPERTY OF THE TRUST ESTATE DURING THE LAST HALF OF THE YEAR 1937 AGGREGATING $1,491,397.

This day coming on to be heard the verified petition of the Trustees for an Order approving expenditures for additions and betterments to be added to the property of the Trust Estate during the last half of the year 1937 aggregating $1,491,397, and it appearing that a copy of said petition has been served on all parties to this proceeding entitled to notice, and the Court having considered the petition, heard the statements of Counsel, and being fully advised in the premises, it is

Ordered, that Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, be, and they are hereby, authorized to expend $1,491,397, chargeable to Investment Account, as set forth in said petition, for additions and betterments to the property of the Trust Estate, to be added after July 1st of the year 1937, said $1,491,397 to be paid out of funds that currently will be in the hands of the Trustees derived from operation of the Trust Estate, a detailed record of said expenditures as made and of said additions and betterments, as applied or allocated to various parts of the Trust Estate, to be kept in form such as will show to which portion of the Railroad of the Trust Estate each addition and betterment is applied or allocated.

Enter:

Holly,
District Judge.

Dated June 29, 1937.

Entered July 7, 1937.

1185 And afterwards, to wit, on the 7th day of July, A. D. 1937, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit:

1186 Order No. 248.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

ORDER EXTENDING TIME WITHIN WHICH TO ELECT WHETHER TO ADOPT OR DISAFFIRM CONTRACTS TO AND INCLUDING JANUARY 31, 1938.

This day coming on to be heard the oral motion of Counsel for Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, for an Order extending the time within which the Trustees may elect whether to adopt or disaffirm leases, agreements or contracts, and it being represented that the Trustees have not completed the examination of the Leases, the Agreements and Contracts to which the Debtor is a party, or under which it may be obligated, in order to determine whether to elect to adopt or disaffirm same within the time fixed by the Order of this Court entered herein on December 12, 1936, and it appearing that Notice of said Motion has been served on all parties to this proceeding entitled to notice, and the Court having considered the Motion, heard the Statements of Counsel, and being fully advised in the premises, it is

Ordered, that the time fixed by Order entered herein December 12, 1936, within which the Trustees may elect whether to adopt or continue in force, or to refuse to adopt or continue in force, or to disaffirm or reject, any lease, trackage, treminal, crossing or operating agreement, or other contract not fully performed, to which the Debtor is a party, or under which it may be obligated, shall be extended to and including January 31, 1938.

Except as hereby modified, Paragraph (4) of the Order entered herein June 29, 1935, shall remain in full force and effect.

The Court reserves full right at any time upon such further orders in the premises as the Court may deem proper, to amend, modify, or otherwise change or rescind the present Order.

Enter:

Holly,
District Judge.

Dated July 7, 1937.

1192 And on, to wit, the 16th day of July, A. D. 1937, came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Petition in words and figures following, to wit: Filed July 16, 1937.

1193 Petition for Order No. 249.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

Petition of Trustees for Authority to Apply to the Interstate Commerce Commission for Certificate of Public Convenience and Necessity to Abandon a Branch Line of Railroad Between Wauzeka and LaFarge, State of Wisconsin, Approximately 52 Miles in Length, on Which Rail Operations Have Become Unprofitable and for Authority to Apply to the Public Service Commission of Wisconsin and to the Interstate Commerce Commission, if Necessary, for a Certificate, or Certificates, of Public Convenience and Necessity to Acquire and Operate Trucking Service Through a Wholly Owned Subsidiary Company, or Any Other Lawful Means, in the Territory Tributary to Said Branch Line of Railroad and in Territory Adjacent Thereto Not Otherwise Adequately Served by Existing Transportation Facilities and for Authority to Abandon Said 52 Miles of Branch Line Railroad Upon Grant of Abandonment Certificate and for Authority to Acquire Trucking Facilities and Operate Trucking Service Through a Wholly Owned Subsidiary Company, or Any Other Lawful Means, in Said Territory Upon Grant of the Requisite Certificate or Certificates.

The petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, respectfully represents:

1. The Trust Estate owns a branch line of railroad approximately 52 miles in length extending from Wauzeka, in the County of Crawford, through the northwest corner of Richland County, to LaFarge, in the County of Vernon, all in the State of Wisconsin. Officers of the Trustees have made a study of revenues derived from and expenses involved in the operation of said branch line which discloses that the estimated gross revenues accruing to the line for the year ended December 31, 1935, were $36,090, the estimated total of expenses having been $91,178. For the year ended December 31, 1936, the estimated gross revenues accruing to the line were $38,930 and the estimated total expenses, $90,278,
which left a deficit for the year 1935 of $55,088 and a
1194 deficit for the year 1936 of $51,348. For the year
ended December 31, 1935, the estimated gross revenues accruing to other System lines from business moving to or from points on said branch line amounted to $92,670, the estimated total expense chargeable against said revenues being $46,336, which leaves a profit of $46,334 to System lines to be subtracted from the loss of $55,088 on the branch line resulting in a net loss figure of $8,754. The corresponding net loss figure for the year 1936 was $764. The study further indicates a gradual decrease in the total freight charges from business that originated and terminated on said branch line during the years 1929 to 1934, both inclusive, from the high of $261,312, in 1929, to a low of $137,739, in 1934. The figure of $154,450 for the year 1935 and the figure of $168,645 for the year 1936 show but slight improvement and the prospects for a substantial future improvement are not good.

2. The branch line in question, while maintained sufficiently for safe operation, is not in good physical condition. It follows the Kickapoo River, a stream with many curves, and is subject to frequent washouts of certain of its embankments, trestles and culverts. The annual maintenance costs, exclusive of washout repairs, are estimated at $775 per mile, or $40,378 per year for the 52 miles, and the washout repair expenses in the years 1933 to 1936, inclusive, averaged approximately $4,000 per year, making a total maintenance and repair charge of approximately $44,378 per annum.

3. The territory served by said branch line is agri-

cultural and sufficiently productive to indicate a profitable return could be realized by the Trust Estate if rail operations were abandoned and highway truck operations substituted to serve the territory now served by said branch line and the territory adjacent thereto not otherwise adequately served. According to the results arrived at by the aforesaid study, the annual cost of serving the territory by truck operations, to the extent of the volume of freight traffic handled by the branch line in the year 1935, would be $69,185 as compared with $96,178, the total expenses of conducting the branch line rail service during that year. This comparison includes interest and depreciation on $33,300, estimated cost of equipment and facilities for truck operations, and interest on salvage recoverable from abandonment of said branch line of railroad.

4. Petitioners believe it is in the interest of the Trust Estate, its creditors and stockholders that said branch line of railroad be abandoned, its materials salvaged and highway truck service substituted in the territory served by said branch line and adjacent territory not otherwise adequately served, and that all steps be taken to acquire the properties, franchises and rights by, and with, which to render such truck service in said territory.

Wherefore, your Petitioners pray that an order be entered authorizing Petitioners to apply to the Interstate Commerce Commission for a certificate of public convenience and necessity to abandon a branch line of railroad between Wauzeka and LaFarge, State of Wisconsin, approximately 52 miles in length, on which rail operations have become unprofitable, and for authority to apply to the Public Service Commission of Wisconsin and, if necessary, to the Interstate Commerce Commission for a certificate, or certificates, of public convenience and necessity to acquire and operate trucking service either through a wholly owned subsidiary company, or through any other lawful means, in the territory tributary to said branch line of railroad and in the territory adjacent thereto not otherwise adequately served by
1195 existing transportation facilities, and for authority to abandon said 52 miles of branch line railroad upon grant of such abandonment certificate, and for authority to acquire trucking facilities and operate trucking service through a wholly owned subsidiary company, or

any other lawful means, in said territory upon grant of such requisite certificate or certificates.

Henry A. Scandrett,
Walter J. Cummings,
George I. Haight,
Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
By Henry A. Scandrett,
One of said Trustees.

O. W. Dynes and
C. S. Jefferson,
Attorneys for Trustees.

[Verification omitted in printing.]

Filed July 16, 1937. Henry W. Freeman, Clerk.

Entered July 16, 1937.

1196 And afterwards, to wit, on the 16th day of July, A. D. 1937, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit:

1197 Order No. 249.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

Order Authorizing Trustees (1) to Apply to the Interstate Commerce Commission for a Certificate of Public Convenience and Necessity to Abandon a Branch Line of Railroad Between Wauzeka and LaFarge, State of Wisconsin, Approximately 52 Miles in Length, and (2) to Apply to Public Service Commission of Wisconsin and to the Interstate Commerce Commission, if Necessary, for a Certificate, or Certificates, of Public Convenience and Necessity to Acquire and Operate Trucking Service Through a Wholly Owned Subsidiary Company, or Any Other Lawful Means, in a Territory Tributary to Said Branch Line of Railroad and in Territory Adjacent Thereto Not Otherwise Adequately Served by Existing Transportation Facilities.

This day coming on to be heard the verified petition of Henry A. Scandrett, Walter J. Cummings and George

I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, for authority to apply to the Interstate Commerce Commission for a certificate of public convenience and necessity to abandon a branch line of railroad between Wauzeka and LaFarge, State of Wisconsin, approximately 52 miles in length, on which rail operations have become unprofitable, and for authority to apply to the Public Service Commission of Wisconsin and, if necessary, to the Interstate Commerce Commission, for a certificate, or certificates, of public convenience and necessity to acquire and operate trucking service either through a wholly owned subsidiary company, or through any other lawful means, in the territory tributary to said branch line of railroad and in the territory adjacent thereto not otherwise adequately served by existing transportation facilities, and for authority to abandon said 52 miles of branch line railroad upon the granting of such abandonment certificate, and for authority to acquire trucking facilities and operate trucking service through a wholly owned subsidiary company, or any other lawful means, in said territory upon grant of such requisite certificate or certificates, and it appearing that a copy of said petition has been served upon all parties to this proceeding entitled to notice, and the Court having considered the petition, heard the statements of Counsel, and being fully advised in the premises, it is

1198 Ordered, that Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of the Debtor herein, be, and they are hereby, authorized (1) to apply to the Interstate Commerce Commission for a certificate of public convenience and necessity to abandon a branch line of railroad of the Trust Estate between Wauzeka and LaFarge, State of Wisconsin, approximately 52 miles in length, and (2) to apply to the Public Service Commission of Wisconsin and, if necessary, to the Interstate Commerce Commission, for a certificate, or certificates, of public convenience and necessity to acquire and operate trucking service either through a wholly owned subsidiary company, or through any other lawful means, in the territory tributary to said branch line of railroad and in the territory adjacent thereto not otherwise adequately served by existing transportation facilities, and if said applications be granted, the Trustees shall serve on all parties entitled to notice in this proceeding a notice

setting the time and place of a further hearing before this Court on the matter of authority to abandon said 52 miles of branch railroad and to acquire trucking facilities and operate trucking service through a wholly owned subsidiary company, or by any other lawful means, in said territory upon grant of such requisite certificate or certificates.

Enter:

Holly,
District Judge.

Dated July 16, 1937.

Filed Aug. 24, 1937.

1204 And on, to wit, the 24th day of August, A. D. 1937 came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Petition for Approval of Wage Increase in words and figures following, to wit:

1205 Petition for Order No. 263.

IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—60463) • •

PETITION FOR COURT'S APPROVAL OF WAGE INCREASE AGREEMENT SIGNED AUGUST 5, 1937, ON BEHALF OF THIS AND CERTAIN OTHER RAILROAD MANAGEMENTS AND ON BEHALF OF REPRESENTATIVES OF FOURTEEN LABOR CRAFTS.

The Petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, respectfully represents:

1. On August 5, 1937, as a result of extended negotiations and the assistance of the National Mediation Board organized under the Act of June 21, 1934, known as Railway Labor Act, representatives of managements of the principal rail carriers in the United States that are subject to the Interstate Commerce Act, including the management of the Railroad of the Trust Estate, and representatives of fourteen labor crafts that had previously pressed demands for wage increases arrived at a wage agreement which agreement, insofar as it affects wages paid by the railroad of the Trust Estate and other debtor railroads, subject to

the jurisdiction of the Interstate Commerce Commission the affairs of which are being administered under Section 77 of the National Bankruptcy Act, or by receivers, is subject to approvals of the Courts of jurisdiction.

2. On and shortly after March 4, 1937, the Chief Operating Officer of Petitioners received from the respective representatives of said fourteen labor crafts notices of which the following is typical:

"Mr. J. T. Gillick,
Chief Operating Officer,
C. M. St. P. & P. RR.,
Union Station Building,
Chicago, Illinois.

Dear Sir:

This is a formal notice served, in accordance with the provisions of Section 6, of the Railway Labor Act, as amended, and the provisions of our existing contract, of our desire to change rates of pay and compensation for all employes we represent, effective April 16, 1937.

Specifically our requests are as follows:

(1) Increase in wages of 20 cents per hour, applied to hourly, daily, weekly, monthly or piece rates, so as to produce the same increase for all employes.

(2) Guarantee of full time compensation for all regular assigned forces.

(3) Guarantee of two-thirds of full time compensation for all stand-by forces."

Similar notices were received by all, or nearly all, other of said railroad managements.

1206 3. The demands covered by the foregoing notices were not granted by your Trustees and the demand being pressed, your Trustees and other members of the Association of Western Railways, unwilling to grant said demands, on or about April 8, 1937, concluded the orderly and economical way of proceeding would be through selected joint representatives, rather than through individual representatives of each railroad company, and pursuant to this method of procedure the following persons were given formal authority to represent western railroads that are subject to the jurisdiction of the Interstate Commerce Com-

mission, substantially all of which had received similar notices:

Messrs.

J. H. Aydelott, General Manager, Chicago, Burlington & Quincy Railroad;
E. J. Connors, Asst. to Exec. V.-Pres., Union Pacific Railroad;
L. B. McDonald, General Manager, Southern Pacific Company (Tex. & La.);
H. E. Stevens, Vice-President, Northern Pacific Railway;
F. L. Thompson, Vice President, Illinois Central System.

This selection was made by the Executive Committee of the Association of Western Railways, and approved by the Western Association of Railway Executives. The Committee as thus constituted was called the "Western Conference Committee" and it was authorized to join with similar committees representing eastern and southern railroads, thus forming a General Carriers Conference Committee. In general the further developments in the matter were so conducted by said Conference Committee on behalf of the principal railroads of the United States that are subject to the Interstate Commerce Act. Your Trustees formally authorized the above named Committee to act jointly for the Railroad of the Debtor Estate while acting for other railroads within the jurisdiction of said Committee subject to this Court's approval.

4. Upon refusal by the representatives of the railroads to grant said demands further developments were substantially in accord with the provisions and requirements of the Railroad Labor Act up to the signing of the agreement of August 5, the text of which agreement is contained in the following:

"National Mediation Board
Washington.

James W. Carmalt, Chairman,
Otto S. Beyer,
William M. Leiserson,
George A. Cook, Secretary

Case No. A-395

Mediation Agreement.

In settlement of differences involved in National Mediation Board Docket Case No. A-395 and referred to in the joint proffer of mediation by the National Mediation Board dated June 29, 1937 to the Chairman of the Carriers' Conference Committee representing the participating carriers listed in Appendices A, B, and C attached hereto and made a part hereof and to the Chairman of the Committee of the 14 participating labor organizations representing the employees with whom said carriers now have agreements determining the rates of pay, hours and working conditions of these employees, and under the provisions of the Railway Labor Act, as amended, it is mutually agreed that the questions in mediation, to wit:

Requests for

1. Increase in wages of 20 cents per hour, applied to hourly, daily, weekly, monthly or piece rates, so as to produce the same increase for all employees,

2. Guarantee of full time compensation for all regular assigned forces,

1207 3. Guarantee of two-thirds of full time compensation for all standby forces,

shall be and are disposed of in their entirety as follows:

1. It is understood and agreed that all hourly, daily, weekly, monthly or piece rates will be increased effective August 1, 1937, in the amount of five cents (5c) per hour, applied so as to produce the same increase irrespective of method of payment. This applies to all employees represented by the labor organizations signatory hereto.

2. Share-the-work practices however established will be terminated on request of the General Chairmen. No such request shall be made however prior to September 1, 1937. This is intended to bring about regular employment to such forces as are required by

each carrier. Forces will be increased or decreased in conformity with the seniority rules, (or supplementary agreements while in effect) on the individual carriers.

3. This agreement shall continue in force from its effective date until changed or modified in accordance with the provisions of the Railway Labor Act.

4. The terms of this agreement are subject to ratification by the General Chairman of the Labor organizations signatory hereto.

Signed at Washington, D. C. this 5th day of August, 1937."

(Schedules containing list of signers and requirement of Court approval follow text of agreement.)

The names of the 14 labor organizations authorized representatives of which signed this agreement are:

Order of Railroad Telegraphers.
International Association of Machinists.
International Brotherhood of Boilermakers and Iron Ship Builders and Helpers of America.
International Brotherhood of Blacksmiths, Drop Forgers and Helpers.
Sheet Metal Workers' International Alliance.
International Brotherhood of Electrical Workers.
Brotherhood Railway Carmen of America.
International Brotherhood of Firemen and Oilers.
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.
Brotherhood of Maintenance of Way Employes.
Brotherhood of Railroad Signalmen of America.
National Organization Masters, Mates and Pilots of America.
National Marine Engineers' Beneficial Association.
International Longshoremen's Assn.
Chairman, Committee of Fourteen Labor Organizations.

The Agreement was executed on behalf of the railroad of the Debtor Estate and of Chicago, Terre Haute & Southeastern Railroad leased to the Debtor Estate, and on behalf of other western railroads, referred to above, and is subject to the approval of this Court for this Trust Estate.

5. Your Petitioners state that competition between railroads and other conditions governing railroad managements and railroad labor are such as to require, in general

at least, that rates of pay of classified railroad labor in a given territorial group at a given time should be uniform as to the respective rates of pay for the respective classes in that group rather than individual or separate as to each road of such territorial group.

6. According to the Trustees' records for the year 1936, the number of employes of the Trust Estate represented by the representatives of said fourteen labor crafts was 20,874. Based upon the amount received by those employes during the year 1936, a five cent (5c) per hour increase would add to the Trustees' annual payroll approximately $2,582,000. Your Petitioners do not represent to the Court that the increase provided for in the text of the Agreement should be permanently granted, but are of the opinion
1208 that under present conditions it is in the interest of the Trust Estate, its creditors and stockholders, and the public that the agreement be approved by this Court at this time, to continue in effect only until such time as it may be cancelled or modified conformably with the provisions of the Railroad Labor Act.

Wherefore, Your Petitioners pray that the Court accordingly approve the said agreement and authorize the Petitioners to put its terms into effect.

Henry A. Scandrett,
Walter J. Cummings,
George I. Haight,
Trustees of the property of Chicago Milwaukee, St. Paul and Pacific Railroad Company,
By Walter J. Cummings,
One of said Trustees.

O. W. Dynes and
C. S. Jefferson,
Attorneys for Trustees.

[Verification omitted in printing.]

Filed August 24, 1937. Henry W. Freeman, Clerk.

1209 And afterwards, to wit, on the 24th day of August, A. D. 1937, being one of the days of the regular August term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles G. Briggle, District Judge, appears the following entry, to wit:

Entered Aug. 24, 1937. 1210

Order No. 263.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER APPROVING WAGE INCREASE AGREEMENT SIGNED AUGUST 5, 1937, ON BEHALF OF THE TRUST ESTATE AND CERTAIN OTHER RAILROAD MANAGEMENTS AND ON BEHALF OF REPRESENTATIVES OF FOURTEEN LABOR CRAFTS.

This day coming on to be heard the verified petition of the Trustees for the approval of a wage increase agreement signed August 5, 1937, on behalf of the Trust Estate and certain other railroad managements and on behalf of representatives of the fourteen labor crafts named in the petition, the terms of which agreement are set forth in said petition, and it appearing that under conditions at this time affecting the operation of the railroad the Trust Estate, it is in the interest of the Trust Estate, its creditors and stockholders and the public that said agreement be approved, and it further appearing that a copy of said petition has been served on all parties to this proceeding entitled to notice, and the Court having considered the petition, heard the statements of Counsel and being fully advised in the premises, it is

Ordered, that the action of the joint representatives selected by the Executive Committee of the Association of Western Railways and approved by the Western Association of Railway Executives acting on behalf of the Trust Estate herein in executing said agreement of August 5, 1937, be, and the same is hereby, approved and the Trustees are authorized to carry out the terms of said agreement and to continue it in effect until such time as it may be cancelled or modified conformably with the provisions of the Railroad Labor Act.

Enter:

Charles G. Briggle,
District Judge.

Dated: August 24, 1937.

1226 And on, to wit, the 21st day of October, A. D. 1937 came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Petition for Approval of Wage Increase Agreement of October 3rd, 1937, in words and figures following, to wit: Filed Oct. 21, 1937.

1227 Petition for Order No. 295.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

PETITION FOR COURT'S APPROVAL OF WAGE INCREASE AGREEMENT SIGNED OCTOBER 3, 1937, ON BEHALF OF THIS AND CERTAIN OTHER RAILROAD MANAGEMENTS AND ON BEHALF OF REPRESENTATIVES OF FIVE LABOR CRAFTS.

The petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, respectfully represents:

1. On October 3, 1937, as a result of extended negotiations, in which the National Mediation Board, organized under the Act of June 21, 1934, known as Railway Labor Act, participated, representatives of managements of the principal rail carriers in the United States that are subject to the Interstate Commerce Act, including the management of the Railroad of the Trust Estate and representatives of five labor crafts that had previously pressed demands for wage increases arrived at a wage agreement which agreement, insofar as it affects wages paid by the railroad of the Trust Estate and other debtor railroads, subject to the jurisdiction of the Interstate Commerce Commission, the affairs of which are being administered under Section 77 of the National Bankruptcy act, or by receivers, is subject to approvals of the Courts of jurisdiction.

2. On and shortly after March 22, 1937, the Chief Operating Officer of Petitioners received from the respective representatives of four of the said five labor crafts a notice, of which the following is a copy:

"Chicago, Illinois
March 22, 1937.
"Mr. J. T. Gillick,
Chief Operating Officer,
CMSTP&P RY
Chicago, Illinois

"Dear Sir:

This is to advise that the employes of the Chicago, Milwaukee, St. Paul & Pacific Railroad, Lines East, engaged in engine, train and yard service, represented and legislated for by these organizations, have approved the presentation of request for increase in rates of pay as follows:

'That effective May 1st, 1937, all existing rates of pay as embodied in schedules, or collateral agreements be increased twenty (20) per cent.'

"In accordance with the terms of our present schedules and/or agreements, and in conformity with the provisions of the Railway Labor Act, kindly accept this as the required official notice of our desire to revise to the extent named, our present schedules and agreements.

1228 "This request is being presented on all other railroads on this date, and it is desired that reply to our proposal be made in writing to the undersigned General Chairman on or before April 1st, 1937, concurring therein, or fixing a date within thirty (30) days from date of this letter when conference with you may be had for the purpose of discussing our proposal. In event settlement is not reached in conference it is suggested that this company join with others in authorizing a National Conference Committee to represent them in dealing with the subject. In submitting this proposal we desire that it be understood that all rules and conditions in our schedules or agreements, not specifically affected by our proposition, shall remain unchanged, subject to changes in the future by negotiation between the

proper officials and committees, as has been the case in the past.

"It is our request that all lines or divisions of railway operated or controlled by the Chicago, Milwaukee, St. Paul & Pacific Railroad, Lines East, shall be included in settlements of this proposal, and that any agreement reached shall apply alike to all such lines of railway."

Similar notices were received by the General Manager, Lines West, of Petitioners and all, or nearly all, other of said railroad managements.

3. The demands covered by the foregoing notices were not granted by your Trustees and the demand being pressed, your Trustees and other members of the Association of Western Railways, unwilling to grant said demands, on or about March 29, 1937, concluded the orderly and economical way of proceeding would be through selected joint representatives, rather than through individual representatives of each railroad company, and pursuant to this method of procedure the following persons were given formal authority to represent western railroads that are subject to the jurisdiction of the Interstate Commerce Commission, substantially all of which had received similar notices:

Messrs. J. H. Aydelott, General Manager, Chicago, Burlington & Quincy Railroad,
E. J. Connors, Asst. to Exec. V.-Pres., Union Pacific Railroad,
L. B. McDonald, General Manager, Southern Pacific Company (Tex. & La.),
H. E. Stevens, Vice-President, Northern Pacific Railway,
F. L. Thompson, Vice President, Illinois Central System.

This selection was made by the Executive Committee of the Association of Western Railways, and approved by the Western Association of Railway Executives. The Committee as thus constituted was called the "Western Conference Committee" and it was authorized to join with similar committees representing eastern and southern railroads, thus forming a General Carriers Conference Committee. In general the further developments in the matter were so conducted by said Conference Committee on behalf

of the principal railroads of the United States that are subject to the Interstate Commerce Act. On June 9, 1937, your Trustees formally authorized the above named Committee to act jointly for the Railroad of the Debtor Estate while acting for other railroads within the jurisdiction of said Committee subject to this Court's approval.

4. Upon refusal by the representatives of the railroads to grant said demands further developments were substantially in accord with the provisions and requirements of the Railroad Labor Act up to the signing of the agreement of October 3, 1937, the text of which agreement is contained in the following:

1229 "National Mediation Board
Washington
Mediation Agreement

Case No. A-410.

"In settlement of wage matters in dispute in National Mediation Board Docket Case No. A-410 and referred to in the joint proffer of mediation by the National Mediation Board dated August 26, 1937, to the Chairman of the Carrier's Conference Committee and to the chief executives of the railway labor organizations signatory hereto;

"This Mediation Agreement by and between the carriers listed in Appendices A, B and C attached hereto and made a part hereof and the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, Brotherhood of Railroad Trainmen, and Switchmen's Union of North America representing the employees covered by the wage agreements as indicated in said Appendices (except such employees as are shown by said Appendices to be excluded from the application of this Mediation Agreement);

"Witnesseth:

"General.

"1. (a) All basic daily rates of pay will be increased in the amount of forty four cents (44c) per day.

(b) Mileage rates shall be determined by dividing the new daily rates by the miles constituting a

basic day's work in the respective classes of service.

(c) Daily earnings minima shall be increased forty four cents (44c).

(d) All arbitraries, miscellaneous rates, or special allowances as provided in the schedule or wage agreements shall be increased under this agreement in proportion to the daily increase herein granted.

(e) Existing money differentials above existing standard daily rates shall be maintained.

"Train Service.

"2. (a) Standard monthly rates and money monthly guarantees in passenger service shall be thirty (30) times the new standard daily rate. Other than standard monthly rates and money monthly guarantees shall be so adjusted that differentials existing as of September 30, 1937, shall be preserved.

(b) Existing monthly rates and money monthly guarantees applicable in other than passenger service will be increased in the same proportion as the daily rate for the class of service involved is increased.

"Engine Service.

"3. In local freight service the same differential in excess of through freight rates as now paid shall be maintained.

"Dining Car Stewards.

"4. All monthly rates shall be increased $13.20.

"Yardmasters.

"5. All monthly rates shall be increased $13.20.

"6. This agreement is and shall be construed as a separate agreement by and in behalf of each carrier party hereto and each labor organization representing employees as hereinbefore stated; and shall be effective as of October 1, 1937, and shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act.

"Signed at Chicago, Illinois, this 3rd day of October, 1937."

(Schedules containing list of signers and requirement of Court approval follow text of agreement.)

The names of the five labor organizations, authorized representatives of which signed this agreement, are:

Brotherhood of Locomotive Engineers,
Brotherhood of Locomotive Firemen and Enginemen,
Order of Railway Conductors,
Brotherhood of Railroad Trainmen,
Switchmen's Union of North America.

The agreement was executed on behalf of the railroad of the Debtor Estate and of Chicago, Terre Haute & Southeastern Railroad leased to the Debtor Estate, and on behalf of other western railroads, referred to above, and is
1230 subject to the approval of this Court for this Trust Estate.

5. According to the Trustee's records for the year 1936, the number of employes of the Trust Estate represented by the representatives of said five labor crafts was 8,330. Based upon the amount received by those employes during the year 1936, the increase provided by said agreement would add to the Trustees' annual payroll approximately $1,270,000.00. Your Petitioners do not represent to the Court that the increase provided for in the text of the agreement should be permanently granted, but are of the opinion that under present conditions it is in the interest of the Trust Estate, its creditors and stockholders, and the public that the agreement be approved by this Court at this time, to continue in effect only until such time as it may be cancelled or modified conformably with the provisions of the Railroad Labor Act.

Wherefore, your Petitioners pray that the Court accordingly approve the said agreement and authorize Petioners to put its terms into effect.

Henry A. Scandrett,
Walter J. Cummings,
George I. Haight,
Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
By Henry A. Scandrett,
One of said Trustees.

O. W. Dynes and C. S. Jefferson,
Attorneys for Trustees.

[Verification omitted in printing.]

Filed October 21, 1937. Henry W. Freeman, Clerk.

1237 And afterwards, to wit, on the 22nd day of October, A. D. 1937, being one of the days of the regular October term of said Court in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Entered Oct. 22, 1937.

1238 Order No. 295.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER APPROVING WAGE INCREASE AGREEMENT SIGNED OCTOBER 3, 1937, ON BEHALF OF THE TRUST ESTATE AND CERTAIN OTHER RAILROAD MANAGEMENTS AND ON BEHALF OF REPRESENTATIVES OF FIVE LABOR CRAFTS.

This day coming on to be heard the verified petition of the Trustees for the approval of a wage increase agreement signed October 3, 1937, on behalf of the Trust Estate and certain other railroad managements and on behalf of representatives of five labor crafts named in the petition, the terms of which agreement are set forth in said petition, and it appearing that under conditions at this time affecting the operation of the railroad of the Trust Estate, it is in the interest of the Trust Estate, its creditors and stockholders and the public that said agreement be approved, and it further appearing that a copy of said petition has been served on all parties to this proceeding entitled to notice, and the Court having considered the petition, heard the statements of Counsel and being fully advised in the premises, it is

Ordered, that the action of the joint representatives selected by the Executive Committee of the Association of Western Railways and approved by the Western Association of Railway Executives acting on behalf of the Trust Estate herein in executing said agreement of October 3, 1937, be, and the same is hereby, approved and the Trustees are authorized to carry out the terms of said agreement and to continue it in effect until such time as it may be cancelled or modified comformably with the provisions of the Railroad Labor Act.

Enter:

James H. Wilkerson,
District Judge.

Dated October 22, 1937.

Entered Jan. 21, 1938.

1268 And afterwards, to wit, on the 21st day of January, A. D. 1938, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit:

1269 Order No. 328.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER EXTENDING TIME WITHIN WHICH TO ELECT WHETHER TO ADOPT OR DISAFFIRM CONTRACTS TO AND INCLUDING JULY 31, 1938.

This day coming to be heard the oral motion of Counsel for Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, for an order extending the time within which the Trustees may elect whether to adopt or disaffirm leases, agreements or contracts, and it being represented that the Trustees have not as yet fully completed the examination of the Leases, the Agreements and Contracts to which the Debtor is a party, or under which it may be obligated, in order to determine whether to elect to adopt or disaffirm same within the time fixed by the Order of this Court entered herein on July 7, 1937, and it appearing that Notice of said Motion has been served on all parties to this proceeding entitled to notice, and the Court having considered the Motion, heard the Statements of Counsel, and being fully advised in the premises, it is

Ordered, that the time fixed by Order entered herein July 7, 1937 within which the Trustees may elect whether to adopt or continue in force, or to refuse to adopt or continue in force, or to disaffirm or reject, any lease, trackage, terminal, crossing or operating agreement, or other contract not fully performed, to which the Debtor is a party, or under which it may be obligated, shall be extended to and including July 31, 1938.

Except as hereby modified, Paragraph (4) of the Order entered herein June 29, 1935, shall remain in full force and effect.

The Court reserves full right at any time upon such further orders in the premises, as the Court may deem proper, to amend, modify, or otherwise change or rescind the present Order.

Enter:

Holly,
District Judge.

Dated January 21, 1938.

[Notice of motion omitted in printing.]

1275 And on, to wit, the 25th day of February, A. D. 1938, came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Petition in words and figures following, to wit: Filed Feb. 25, 1938.

1276 Petition for Order No. 345.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

Petition of Trustees for Authority to Apply to the Interstate Commerce Commission for a Certificate of Public Convenience and Necessity Authorizing Abandonment of Approximately 8.9 Miles of Branch Line Railroad Between Menno and Scotland, in Hutchinson and Bon Homme Counties, South Dakota, and for Authority to Abandon Upon the Granting of Such Certificate.

The petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, respectfully represents:

1. The 8.9 miles of branch line of railroad of the Trust Estate here sought to be abandoned is part of a branch line that was constructed in the year 1879 by the Chicago, Milwaukee and St. Paul Railway Company extending from Marion Junction to Running Water. The portion of that branch line between Springfield and Running Water was abandoned in the year 1930 by authority of the Interstate Commerce Commission, (Finance Docket No. 7492) and the portion of that branch line between Scotland Junction and Tyndall was abandoned in the year 1936 by authority of the Interstate Commerce Commission (Finance Docket No. 11091). There is now left of the branch line between

Marion Junction and Running Water a stub line from Tyndall to Springfield and the line from Marion Junction to Scotland Junction. If the line here sought to be abandoned between Menno and Scotland should be abandoned, there will then be left another stub line between Marion Junction and Menno. The stub that will so remain between Marion Junction and Menno will continue to be served from Marion Junction quite as the stub between Tyndall and Springfield now is being served satisfactorily from Tyndall.

2. There is no town between Menno and Scotland though a loading station is located between those points at a place named Tuscan, the meager business to and from which can be handled, after abandonment, to and from Scotland. No revenue will be lost to the railroad of the Trust Estate through the proposed abandonment of the line between Menno and Scotland. Train service has not been required on that portion of the line since February, 1937.

3. The line between Menno and Scotland lies in Hutchinson and Bon Homme Counties, South Dakota, and is equipped principally with 56-pound rail laid in 1898-9 and some rerolled 60-pound rail laid in 1906 and 1912. To continue to operate over this trackage would require the maintenance of numerous pile bridges and would entail an immediate expenditure for necessary bridge renewals and maintenance of approximately $4000.

1277 4. The estimated investment in the line between Menno and Scotland is $165,700 and, if abandoned, the resulting savings in taxes are estimated at $1000 per year. The net value of salvage is estimated at $13,500.

5. No important service will be discontinued by the proposed abandonment and there are no requirements of shippers or communities that would justify the expense of maintaining and operating said portion of branch line. Your Petitioners believe it is in the interest of the Trust Estate, its creditors and stockholders that said portion of branch line be abandoned and believe said abandonment will not unduly or adversely affect the public interest.

Wherefore, Petitioners pray that an order be entered authorizing them to make application to the Interstate Commerce Commission for a certificate of public convenience and necessity authorizing said abandonment of said 8.9 miles of branch line railroad of the Trust Estate between Menno and Scotland, in Hutchinson and Bon Homme Counties, South Dakota, and that, upon obtaining such cer-

tificate of public convenience and necessity, the Trustees be authorized to abandon said portion of branch line.

Henry A. Scandrett,
Walter J. Cummings,
George I. Haight,
Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
By Henry A. Scandrett,
One of said Trustees.

O. W. Dynes and
C. S. Jefferson,
Attorneys for Trustees.

[Verification omitted in printing.]

Filed February 25, 1938. Henry W. Freeman, Clerk.

1278 And afterwards, to wit, on the 25th day of February, A. D. 1938, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Entered Feb. 28, 1938.

1279 Order No. 345.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER AUTHORIZING TRUSTEES TO MAKE APPLICATION TO THE INTERSTATE COMMERCE COMMISSION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING ABANDONMENT OF APPROXIMATELY 8.9 MILES OF BRANCH LINE RAILROAD BETWEEN MENNO AND SCOTLAND, IN HUTCHINSON AND BON HOMME COUNTIES, SOUTH DAKOTA.

This day coming on to be heard the verified petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, for authority to make application to the Interstate Commerce Commission for a Certificate of Public Convenience and

Necessity authorizing abandonment of approximately 8.9 miles of branch line railroad of the Trust Estate between Menno and Scotland, in Hutchinson and Bon Homme Counties, South Dakota, and for authority to abandon said branch line, and it appearing that a copy of said petition has been served on all parties to this proceeding entitled to notice, and the Court having heard the statements of Counsel and being fully advised in the premises, it is

Ordered, that Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, be, and they are hereby, authorized to make, verify and file an application to the Interstate Commerce Commission for a Certificate of Public Convenience and Necessity authorizing the abandonment of said 8.9 miles of branch line railroad of the Trust Estate, between Menno and Scotland, in Hutchinson and Bon Homme Counties, State of South Dakota, and that upon obtaining said Certificate of Public Convenience and Necessity the Trustees are authorized to abandon said portion of branch line.

Enter:

James H. Wilkerson,
District Judge.

Dated February 25, 1938.

Filed Mar. 4, 1938.

1231 And on, to wit, the 4th day of March, A. D. 1938, came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Petition for Approval of Improvement Budget for the Year 1938 in words and figures following, to wit:

1232 Petition for Order No.....

IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—60463) • •

PETITION OF TRUSTEES FOR APPROVAL OF IMPROVEMENT BUDGET FOR THE YEAR 1938.

The petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, respectfully represents:

1. Your Petitioners submit herewith for approval of

the Court Improvement Budget items and costs for the year 1938.

2. Attached hereto and made a part hereof as Exhibit "A" is a description of the Budget items and costs, one item of which, appearing under the caption "New Equipment", which reads—"Freight Cars—500—52′ 6″, 50 ton capacity flats" should read—"Freight Cars —499, 464—52′ 6″, 50 ton capacity flats, 35—48′ 6″, 70 ton capacity gondolas", the cost item of which to remain unchanged at $1,126,500.

3. On account of the decline in revenues which began in June, 1937, and continued throughout the year and present indications that it may continue for the first six months of 1938, Petitioners have confined their recommendations for Capital Expenditures in 1938 to the minimum. The fifty-five new passenger cars and the four hundred ninety-nine new freight cars will be constructed in the Mil-
1233 waukee Shops of the Trust Estate and will be constructed as satisfactorily as and at a substantially lower out-of-pocket cost than if purchased from outside car builders. This construction work will be done without interfering with shop repair work.

4. Petitioners further state that the proposed Budget expenditures for the year 1938, exclusive of expenditures for new equipment necessary to meet the transportation requirements of the System, aggregating $3,960,443, are for rail, ballast and bridge programs, for protection of railroad tracks paralleling the Mississippi River against the consequences of work being done by the United States Government in connection with its inland waterway improvements, for the cost of improvements to existing equipment and for the cost of certain ordinary improvements, the items and costs of which appear in Exhibit "A".

5. Your Petitioners are of the opinion that the proposed expenditures, for which authorization of the Court is here sought, are necessary and that the proposed improvements, substantially as herein set forth, subject only to such slight changes as may be found economical, would be in the interest of the Trust Estate, its creditors and stockholders.

Wherefore, Petitioners pray that an order be entered authorizing expenditures chargeable to Investment Account in the aggregate sum of $6,058,873 for the aforesaid improvements and authorizing such improvements to be made during the year 1938 to the railroad property of the

Trust Estate as herein and in said Exhibit "A" set forth, subject only to such slight changes as may be found economical which will not increase the total cost and will be of benefit to the Trust Estate.

Henry A. Scandrett,
Walter J. Cummings,
George I. Haight,
Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
By Henry A. Scandrett,
One of said Trustees.

O. W. Dynes and C. S. Jefferson,
Attorneys for Trustees.

1234 United States of America,
Northern District of Illinois, } ss.
Eastern Division.

Henry A. Scandrett, being duly sworn, deposes and says that he is one of the Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company; that he has read the foregoing petition and knows the contents thereof and that the facts alleged therein are true as he verily believes.

Henry A. Scandrett.

Subscribed and Sworn to before me this 24th day of February, 1938.

R. W. Spangenberg,
(Seal) *Notary Public, Cook County, Illinois.*

My Commission Expires June 7, 1939.

Filed ....., 1938. ..... Clerk.

1235

EXHIBIT "A"

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY
Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees

Improvement Budget for 1938

DESCRIPTION	ESTIMATED COSTS. Investment Account	Operating Expenses Less Salvage	Total Less Salvage
ROAD AND EXISTING EQUIPMENT			
Rail Program:—			
6,282 gross tons new rail, or 35.31 miles and 6,684 gross tons second hand rail, or 46.96 miles including fastenings, turnouts, tie plates, rail anchors, additional ties, incidental signal work and all labor of application	$ 237,263.	$ 326,234.	$ 563,497.
Tie plates, rail anchors, and R. R. crossings to be installed outside of the relay rail limits including all labor of application	400,000.	96,332.	496,332.
Ballast Program:—76,160 cu. yds.—38.08 miles	8,465.	50,113.	58,578.
Bridge Program:—305 structures	575,692.	111,830.	687,522.
Extend culverts, widen embankment, raise track and bridges, and place rip rap to protect embankment on account of construction of Government Dams Nos. 12, 13 and 14	133,198.	13,632.	146,830.
Construct connection with Great Northern near Monroe, Washington. (This to enable the Milwaukee to use approximately one-half mile of Great Northern track and to abandon its own track and avoid reconstruction of bridges estimated to cost $166,546)	89,441.	11,136.	100,577.
Replace turntables, extend enginehouse stalls, strengthen bridges, etc., necessary to the operation of the 30 new freight locomotives. To complete work authorized in 1937	126,144.	19,490.	145,634.
Air condition 12 steel coaches	108,000.	49,800.	157,800.
Convert 12 parlor cars to suburban coaches	35,808.	17,192.	53,000.
Convert 2 Cafe Coaches to Cafe parlor cars and air condition	25,132.	20.	25,152.
Install automatic stokers in 13 locomotives (Interstate Commerce Commission order.)	50,478.	2,650.	53,128.
Other Improvements to existing equipment	256,000.	76,838.	362,838.
Ordinary Improvements:			
Class 1—Widening cuts and fills, roadbed protection, tiling wet cuts, minor line changes, etc.	88,007.	3,515.	91,522.
5—Tunnels	5,520.	1,380.	6,900.
7—Elimination of grade crossings	30,959.	539.	31,498.
8—Grade crossings, crossing signals and renewal of overhead crossings	213,026.	57,880.	270,906.
10—Industrial and other tracks	179,531.	9,524.	189,055.
12—Signals and interlocking plants	67,083.	4,150.	71,233.
13—Telegraph and telephone lines	8,952.	1,453.	10,405.
14—Roadway machinery and tools	56,538.	1,180.	57,718.
15—Roadway buildings	2,429.	—	2,429.
16—Fences and snowsheds	7,237.	30.	7,267.
17—Freight and passenger stations, platforms, stockyards and other station facilities	485,063.	15,309.	500,372.
19—Fuel stations and appurtenances	3,570.	364.	3,934.
20—Water stations and appurtenances	55,210.	696. Cr.	54,514.
21—Shop buildings, enginehouses and appurtenances	373,348.	26,590.	399,938.
22—Shop machinery and tools	182,754.	2,966. Cr.	179,788.
23—Electric power plants, substations, transmission and distribution lines	90,409.	1,175.	91,584.
28—Assessments for public improvements	25,000.	—	25,000.
34—Other improvements	10,186.	550.	10,736.
TOTAL—ROAD AND EXISTING EQUIPMENT	3,960,443.	895,244.	4,855,687.
NEW EQUIPMENT			
1 Steam locomotive—To complete construction of locomotive in Company Shops authorized in 1937	53,658.	—	53,658.
Air dump cars—8 new and 11 used, 30 cu. yd. capacity steel cars purchased under lease agreement. Payment to be made in 1938	15,116.	484.	15,600.
	68,774.	484.	69,258.
Locomotives—6 High speed passenger $ 987,000.			
Passenger Cars—4 Tap-baggage, 4 dining, 10 parlor, 15 coaches, 2 railway post office, 10 branch line coach-baggage-mail, 10 branch line coach-baggage 1,507,530.			
Freight Cars—500-52' 6", 50 ton capacity flats 1,126,500.			

ROAD AND EXISTING EQUIPMENT			
Rail Program:—			
6,382 gross tons new rail, or 35.31 miles and 6,684 gross tons second hand rail, or 46.96 miles including fastenings, turnouts, tie plates, rail anchors, additional ties, incidental signal work and all labor of application	$ 237,263.	$ 326,234.	$ 563,497.
Tie plates, rail anchors, and R. R. crossings to be installed outside of the relay rail limits including all labor of application	400,000.	96,332.	496,332.
Ballast Program:—76,160 cu. yds.—38.08 miles	8,465.	50,113.	58,578.
Bridge Program:—306 structures	575,692.	111,830.	687,522.
Extend culverts, widen embankment, raise track and bridges, and place rip rap to protect embankment on account of construction of Government Dams Nos. 12, 13 and 14	133,198.	13,632.	146,830.
Construct connection with Great Northern near Monroe, Washington. (This to enable the Milwaukee to use approximately one-half mile of Great Northern track and to abandon its own track and avoid reconstruction of bridges estimated to cost $166,546)	89,441.	11,136.	100,577.
Replace turntables, extend enginehouse stalls, strengthen bridges, etc., necessary to the operation of the 30 new freight locomotives. To complete work authorized in 1937	126,144.	19,490.	145,634.
Air condition 12 steel coaches	108,000.	49,800.	157,800.
Convert 12 parlor cars to suburban coaches	35,808.	17,192.	53,000.
Convert 2 Cafe Coaches to Cafe parlor cars and air condition	25,132.	20.	25,152.
Install automatic stokers in 13 locomotives (Interstate Commerce Commission order.)	50,478.	2,650.	53,128.
Other Improvements to existing equipment	286,000.	76,838.	362,838.
Ordinary Improvements:			
Class 1—Widening cuts and fills, roadbed protection, tiling wet cuts, minor line changes, etc	88,007.	3,515.	91,522.
5—Tunnels	5,520.	1,380.	6,900.
7—Elimination of grade crossings	30,959.	539.	31,498.
8—Grade crossings, crossing signals and renewal of overhead crossings	213,026.	57,880.	270,906.
10—Industrial and other tracks	179,531.	9,524.	189,055.
12—Signals and interlocking plants	67,083.	4,150.	71,233.
13—Telegraph and telephone lines	8,952.	1,453.	10,405.
14—Roadway machinery and tools	56,538.	1,180.	57,718.
15—Roadway buildings	2,429.	—	2,429.
16—Fences and snowsheds	7,237.	30.	7,267.
17—Freight and passenger stations, platforms, stockyards and other station facilities	485,063.	15,309.	500,372.
19—Fuel stations and appurtenances	3,570.	364.	3,934.
20—Water stations and appurtenances	55,210.	696. Cr.	54,514.
21—Shop buildings, enginehouses and appurtenances	373,348.	26,590.	399,938.
22—Shop machinery and tools	182,754.	2,966. Cr.	179,788.
23—Electric power plants, substations, transmission and distribution lines	90,409.	1,175.	91,584.
28—Assessments for public improvements	25,000.	—	25,000.
34—Other improvements	10,186.	550.	10,736.
TOTAL—ROAD AND EXISTING EQUIPMENT	3,960,443.	895,244.	4,855,687.
NEW EQUIPMENT			
1 Steam locomotive—To complete construction of locomotive in Company Shops authorized in 1937	53,658.	—	53,658.
Air dump cars—8 new and 11 used, 30 cu. yd. capacity steel cars purchased under lease agreement. Payment to be made in 1938	15,116.	484.	15,600.
	68,774.	484.	69,258.
Locomotives—6 High speed passenger — $ 987,000.			
Passenger Cars—4 Tap-baggage, 4 dining, 10 parlor, 15 coaches, 2 railway post office, 10 branch line coach-baggage-mail, 10 branch line coach-baggage — 1,507,530.			
Freight Cars—500-52' 6", 50 ton capacity flats — 1,126,500.			
Total — 3,621,030.			
To be financed through sale of equipment trust certificates — 2,523,641.			
To be financed out of Railroad funds	$1,097,389.		
Locomotives—16 Heavy high speed freight (Balance of 30 authorized in 1937.) — 2,172,607.			
Freight Cars—700-48' 6", 70 ton capacity gondola (Balance of 1000 authorized in 1937.) — 1,556,461.			
Total — 3,729,068.			
To be financed through sale of equipment trust certificates — 2,796,801.			
	932,267.		
To be financed out of Railroad funds	2,029,656.	2,029,656.	— 2,029,656.
TOTAL—NEW EQUIPMENT		2,098,430.	484. 2,098,914.
TOTAL BUDGET TO BE PROVIDED FROM RAILROAD FUNDS		6,058,873.	895,728. 6,954,601.

1236 Endorsed: District Court of United States. * * (Caption—60463) * * Petition of Trustees for Approval of Improvement Budget for the Year 1938. Filed Mar. 4, 1938. Henry W. Freeman, Clerk. O. W. Dynes, C. S. Jefferson, Attorneys for Trustees, 888 Union Station, Chicago, Illinois.

1283 And afterwards, to wit, on the 4th day of March, A. D. 1938, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit: Entered Mar. 4, 1938.

1284 Order No. 347.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER APPROVING IMPROVEMENT BUDGET FOR THE YEAR 1938.

This day coming on to be heard the verified petition of the Trustees for an Order approving the proposed Improvement Budget of the property of the Trust Estate for the year 1938, prepared under the direction of the Trustees thereof, and it appearing that a copy of said petition, to which was attached as an exhibit and marked Exhibit "A" a description of the proposed Budget items and costs, has been served on all parties to this proceeding entitled to notice, and that a copy of said Exhibit has been filed herein, and the Court having considered the petition, heard the statements of Counsel, and being fully advised in the premises, it is

Ordered, that the proposed expenditures in the aggregate sum of $6,058,873 chargeable to Investment Account, as specified in said Exhibit "A" on file herein, are approved and the Trustees are authorized to make such improvements during the year 1938 to the railroad property of the Trust Estate as are in said petition and in said Exhibit "A" set forth, subject only to such slight changes as may be found economical and which will not increase the total cost and will be of benefit to the Trust Estate.

Enter:

Holly,
District Judge.

Dated March 4, 1938.

Filed June 28, 1938. 1314 And on, to wit, the 28th day of June, A. D. 1938, came the Court and filed in the Clerk's office of said Court its certain FINDINGS OF FACT in words and figures following, to wit:

1315 In the District Court of the United States.

* * (Caption—60463) * *

The Court finds the facts and enters its findings for facts as follows:

I.

Among the assets of the Debtor now in possession of the Trustees appointed in this proceeding is a 999-year lease from the Chicago, Terre Haute and Southeastern Railway Company (hereinafter referred to as the "Terre Haute"), giving possession and use of the railroad described in finding No. V infra, connecting through the lines of the Baltimore & Ohio Chicago Terminal Railway Company and Indiana Harbor Belt Railroad Company, with the system of the Debtor, which since 1921 has been operated as an integral part of the railroad operated by the Debtor and its predecessor, the Chicago, Milwaukee & St. Paul Railway Company, and by the Trustees since January 1, 1936. A part of the property covered by the lease is subject to the lien of the First Mortgage Bonds of the Bedford Belt Railway Company (hereinafter referred to as the "Bedford Belt"), of which $250,000 in principal amount are outstanding in the hands of the public and will mature on July 1, 1938.

II.

The Trustees of the Debtor have filed a petition for instructions and have urged that they be directed to pay the bonds of the Bedford Belt at maturity on July 1, 1938, because they contend that non-payment may result in a default under the lease, a default under the mortgage of the Bedford Belt, and a default under other mortgages securing bonds which have liens on the leased property of the Terre Haute, and will thus result in a loss to the Debtor's estate of its property, rights and benefits in and under said lease. Others who favor the payment of these bonds at maturity are the Trustees under the mortgage securing the Bedford Belt bonds, and the Chicago, Terre

Haute and Southeastern Railway Company, both of which have filed special intervening petitions and answers, and the Trustee under the Debtor's mortgage issued to secure the Fifty Year 5% Bonds of 1975, of which $106,395,096 in principal amount are outstanding in the hands of the public and is now in default. The latter Trustee asks that payment be made unless arrangements can be had for extending, refunding or otherwise making adequate provision for meeting the maturity of the Bedford Belt bonds, which will prevent impairment of the leasehold which is pledged with said Trustee. Payment is opposed by the Debtor, whose Board of Directors authorized formal presentation to the Court of a request that payment be deferred until the general railroad situation can be clarified, the earning capacity of the Terre Haute under more normal conditions can be determined, and
1316 the total amount of fixed charges which the Interstate Commerce Commission will permit the reorganized company to assume can be ascertained, in order that the proportion thereof properly allocable to the Terre Haute bonds may be determined. Others who have filed answers opposing the payment are the Group of Institutional Investors, owners of various bonds of the Debtor (including the Terre Haute) in the principal amount of $81,731,200; the Trustee under the Chicago, Milwaukee & St. Paul Railway Company General Mortgage Bonds of 1989, of which $138,788,000 are outstanding and in default, this mortgage being the first mortgage on most all of the Debtor's eastern lines which connect through lines of other railroads with the Terre Haute and have drawn their fuel supply largely therefrom; the Trustee of the two mortgages securing Milwaukee & Northern Railway bonds, constituting a lien on a portion of the Debtor's property and securing bonds outstanding in the principal amount of $7,189,000, which are now in default as to interest; and the Trustee under the mortgage securing the Debtor's Convertible Adjustment 5% Bonds of 2000, of which $182,873,693 principal amount are now outstanding and in default. Of these the Trustee of the Milwaukee & Northern specifically asks that there be a resumption of interest payments on the bonds secured by its mortgages, there having been a default in respect thereto on June 1, 1938, in the amount of $161,750. The Trustee of the Debtor's First and Refunding Mortgage, all of the $8,923,000 principal amount of outstanding

bonds of which are pledged with the Reconstruction Finance Corporation as collateral, seeks special relief by asking the Court to instruct the Trustees to pay to it interest in the amount of $227,250 on Terre Haute bonds which it holds as collateral for the Debtor's First and Refunding Bonds. The Reconstruction Finance Corporation also appeared by counsel, who stated that it neither approved nor disapproved the payment.

III.

The 999-year lease by which the Terre Haute leased its railroad to the Debtor's predecessor was executed to become effective on July 1, 1921. At that time the Terre Haute had acquired all of the assets subject to the outstanding First Mortgage Bonds of the Southern Indiana Railway Company, which in turn had prior thereto acquired all of the assets subject to the outstanding First Mortgage Bonds of the Bedford Belt Company. In addition, the Terre Haute had at the time of the making of the lease, or subsequently, issued its own First and Refunding Mortgage Bonds and Income Bonds, so that there were at the date of bankruptcy and are now outstanding bonds of the Terre Haute or its predecessors secured by lien on one or more portions of the line subject to the lease, the following bonds in the indicated principal amounts:

Name	Outstanding	Maturity
Southern Indiana Railways 1st 4's	$ 7,287,000	1951
Bedford Belt Railway 1st 5's	250,000	1938
C. T. H. & S. E. Ry. 1st and Ref. 5's	8,056,000#	1960
C. T. H. & S. E. Ry. Income 5's	6,336,000	1960
Total	$21,929,000	

All of the aforesaid bonds are herein collectively referred to as "Terre Haute bonds" and the mortgages securing the same, as "Terre Haute mortgages."

$1,515,000 additional owned by Trust Estate and pledged.

1317 IV.

By order of this Court, dated July 6, 1935, which classified the creditors and stockholders of the Debtor herein, the bondholders of the Terre Haute and its subsidiaries, including the Bedford Belt, were classified as follows:

26. The Bedford Belt Railway Company First Mortgage 5 Per Cent bonds, due July 1, 1938.

27. The Southern Indiana Railway Company First Mortgage 4 Per Cent Bonds, due February 1, 1951.

28. Chicago, Terre Haute & Southeastern Railway Company First and Refunding Mortgage 50-year 5 Per Cent Bonds, due December 1, 1960.

29. Chicago, Terre Haute & Southeastern Railway Company Income Mortgage 50-year 5 Per Cent Bonds, due December 1, 1960.

V.

The 999-year lease from the Terre Haute, Lessor, to the Debtor's predecessor, Lessee, gave to the Lessee full possession and use of all of the Lessor's railroad property. The Debtor herein became the successor Lessee and the Trustees of the Debtor, who were appointed on January 1, 1936, became the successors in interest of the Lessee under the lease. The property of the Terre Haute covered by the lease extends from a point about one mile south of Chicago Heights, Illinois, to Westport, Indiana. As of June 30, 1935, it comprised, with its branches, 360.75 miles of first main track, 44.41 miles of second main track, and approximately 219 miles of all other tracks. Since 1921 the railroad of the Terre Haute has been operated as an integral and component part of the Railroad system of the Debtor now operated by the Trustees, and has served as a vehicle for the transportation of fuel for the general operating requirements of the eastern portion of the railroad system of the debtor, as well as serving general transportation requirements.

VI.

The lease dated July 1, 1921, between the Terre Haute and the Debtor's predecessor provided among other things:

(a) That the railroad of the Terre Haute, including the Bedford Belt, was leased to the Lessee, its successors and assigns for a term of 999 years from July 1, 1921;

(b) That there should be paid directly by the Lessee as annual rental all taxes payable assessed against the Terre Haute, interest as it becomes due on all outstanding bonds constituting a lien on the leased properties, and an amount, not exceeding $12,000 per year, necessary for the corporate expenses of the Terre Haute;

(c) The Lessee covenanted that at the maturity date of the several bond issues constituting a lien on the leased property, the Lessee would pay and discharge the principal of said bonds, unless said bonds should be otherwise extended or refunded; and in the event of such payment, the Lessee should be entitled to receive an equal principal amount of Lessor's First and Refunding Mortgage bonds;

(d) The Lessee covenanted that during the term of the lease it would at its own expense replace property retired, and perform all of the agreements, covenants, conditions and obligations contained in the several respective mortgages and the bonds issued thereunder constituting liens upon the leased property retired, and perform all of the agreements, covenants, conditions and obligations in said mortgages on said property required to be kept and performed by the Lessor;

(e) That the Lessee was required to pay to stockholders of the Lessor $10.00 per share for each share of capital stock of the Terre Haute owned by them upon tender of delivery of such stock; and

1318 (f) That at any time during the term of the lease the Lessee should have the right upon the payment to the stockholders of Terre Haute $10.00 per share, either through purchase of their stock at such price or by depositing of the same with the designated depositary, the First Trust and Savings Bank of Chicago, or its successor, and upon delivery of a writing formally assuming and guaranteeing the then outstanding lien obligations of the Terre Haute, to demand and receive a deed of conveyance of the title of the Terre Haute to all of the property covered by said lease in fee simple.

VII.

The Terre Haute has outstanding 41,729.95 shares of capital stock, of which the Debtor and its predecessor have acquired a total of 40,470.95 shares which were owned by the Debtor at the date of bankruptcy, said shares having been acquired in the amounts and during the periods as follows:

Year	Number of Shares Acquired
1921	38,290.6
1922	643.4
1923	226.5
1924	171.2
1925	214.0
1926	78.4
1927	14.3
1928	9.0
1929	507.5
1930	38.8
1931	101.7
1932	113.8
1934	48.0
1935	13.7

The title and voting rights in said 40,470.95 shares of capital stock of the Terre Haute are now in the Trustees of the Debtor, the stock being pledged as collateral with one or more of the mortgage Trustees of the Debtor. Said 40,470.95 shares constitute the majority of the capital stock of the Terre Haute which has power to vote for the election of directors of said corporation.

VIII.

Under and by virtue of the provisions of the mortgage indenture securing the Income 5% Bonds of the Terre Haute, of which the principal amount of $6,336,000 is now outstanding, the holders of said Income Bonds are given one vote for each $100 par value. This right is given under and pursuant to a statute of the State of Indiana permitting the conferring of such rights in certain cases wherein a corporation acquired property of a railroad which has been sold pursuant to judicial proceedings. Such statute provides that bondholders so given

the vote shall not be entitled to dividends. The equity ownership of the property of the Terre Haute is represented by the stock of that company, the income bondholders being creditors and having no interest in the property or the earnings thereof except their rights and liens as mortgage creditors in connection with their debt and its interest, and having voting rights for the protection of their interests.

IX.

Members of the Group of Institutional Investors, as of the time of the organization of the Group, were owners of Income 5% Bonds of the Terre Haute in the principal amount of $1,500,000.

1319

X.

The amendment to the charter of the Terre Haute, adopted October 4, 1923, introduced as Exhibit 8, provides that the directors of the company shall consist of five members who shall be chosen from any of the stockholders. At the date of bankruptcy of the Debtor and now the Board of Directors of the Terre Haute consists of H. A. Scandrett, W. W. K. Sparrow, H. H. Field, Percy B. Eckart and W. F. Peter. The officers of the Terre Haute consist of H. A. Scandrett, President; H. H. Field, Vice President; John Dickie, Treasurer; Walter V. Wilson, Auditor. Of the foregoing officers and directors of the Terre Haute, H. A. Scandrett is a Trustee of the Debtor and W. W. K. Sparrow, H. H. Field, John Dickie and Walter V. Wilson are officers of the Trustees of the Debtor. At the date of bankruptcy, H. A. Scandrett was President of the Debtor, W. W. K. Sparrow was Vice President of the Debtor, H. H. Field was Special Counsel of the Debtor and John Dickie and Walter V. Wilson were also officers of the Debtor. The said Scandrett and Sparrow ceased to be officers and directors of the Debtor as of May 19, 1938.

XI.

Since July 1, 1930, certain equipment acquired by the Debtor from the Terre Haute under the 999 year lease has been retired by the Debtor and the Trustees in bankruptcy and has not been replaced. As of December 31, 1937 the estimated maximum cost of replacement of such

equipment, new, in accordance with the requirements of the Terre Haute lease and of the Terre Haute mortgages, was $7,106,149. At the hearing, the witness for the Trustees testified that in his opinion it is permitted by the provisions of the lease and of the various mortgages to make such replacements with second-hand equipment, having the required efficiency, capacity and value prescribed by the mortgages and the lease, and it was estimated that the cost of such second-hand equipment would be $2,173,467. The Trustees do not have possession of either new or second-hand equipment, except such as is subject to the liens of one or more existing mortgages of the Debtor.

XII.

The Terre Haute lease provides that the failure to replace equipment as required under Article Six, Section 2 thereof, is a cause of default upon 60 days' notice, and in so far as such failure is also a failure to meet the requirements of the Terre Haute mortgages, it is a default without notice; and that upon such default the Lessor may institute suit against the Lessee or its successors, or may terminate the lease. The Terre Haute mortgages provide that the failure to replace retired equipment is a violation of one or more of their several covenants, and upon failure to remedy such default within six months after notice from the mortgage Trustees, or any of them, becomes an event of default pursuant to one or more of said mortgages; upon such event of default, the Trustee may and at the request of the holders of 50% of the bonds of any of said issues outstanding shall forthwith declare the principal of the respective bonds to be due and payable and may take such further action as is provided in said mortgages respectively. Although failure to replace equipment retired has existed since July, 1930, no action has ever been taken to ripen any such replacement failure into defaults or to accelerate the maturity of any bonds because of such defaults.

1320 The Terre Haute lease and the Terre Haute mortgages provide that failure to pay on July 1, 1938, the $250,000 in principal amount of Bedford Belt bonds will also constitute an event of default under the terms of the lease and will constitute a default without grace under the

mortgage securing the Bedford Belt bonds and the mortgages securing the First and Refunding Bonds of the Terre Haute and the Income Bonds of the Terre Haute. In the event of such default, the mortgages provide that the Trustee of any of said mortgages may and upon the request of 50% of the outstanding bonds shall accelerate the maturity thereon so that the same will thereupon become due and payable.

XIV.

Interest has been paid as it has become due on all of the bonds described in finding No. III, constituting a lien upon the lease of property outstanding in the hands of the public. During the period of bankruptcy the Trustees of the Debtor also made some payments of interest to holders of General Mortgage Bonds of the C. M. & St. P. Ry. Co., but discontinued making such payment in 1936 and no payments of interest thereon have been made since that time. Said Trustees also paid current interest on the bonds of the Milwaukee and Northern Railway Company outstanding in the hands of the public in the principal amount of $7,189,000 including December 1, 1937, from which time interest has been discontinued by the Trustees and the interest due on June 1, 1938 is now in default. Said bonds of the Milwaukee and Northern mature as to principal on June 1, 1939.

XV.

W. W. K. Sparrow, an officer of the Trustees and formerly Vice-President of the Debtor, made an estimate of the value of the leased lines in connection with the operation of the Debtor's railroad system based upon an estimate of the earnings of such leased lines, assuming a credit to them of the current tariff rates on company fuel and other company material of the trust estate transported over such lines as though such lines were operated independently of the rest of the system. On this basis he showed that the net income after payment of rental on the leased lines would have amounted to $1,966,546 for the year 1936 and to $1,820,687 for the year 1937. During these two years the amount of coal for operation of the trust estate transported over the leased lines was 2,049,747 tons in 1936 and 2,019,181 tons in 1937. In the proceeding before the Interstate Commerce Commission for the re-

organization of the Debtor, the Bureau of Valuation by order of the Commission, pursuant to Section 77 (c) of the Bankruptcy Act filed its findings of the elements of value as of December 31, 1935 of the Terre Haute, including all properties covered by the lease, which showed cost of reproduction less depreciation to be $19,357,027 and the value of lands and rights to be $1,323,087.

XVI.

It was the opinion of W. W. K. Sparrow that no net earnings had been received by the trust estate during the years 1936 and 1937 as a result of the operation of that portion of the leased property covered by the mortgage of the Bedford Belt bonds.

1321 XVII.

During the first four months of 1938 the operation of the trust estate by the Trustees of the property of the Debtor was unprofitable and the net railway operating income, after taxes and equipment rents and joint facility rents, amounted to approximately $118,032 as contrasted with net railway operating income during a similar period in 1937 of $2,339,701. The Trustees now have cash on hand in their treasury in the estimated amount of $5,300,000.

XVIII.

Annual interest charges of the Debtor on its funded and other debt amount to $23,705,163. Interest is now in default on various bond issues of the Debtor, the principal amount of such bonds aggregating $438,245,769.

XIX.

No action has been taken by the Trustees of the Debtor to exercise their right of election in respect to the disaffirmance or discontinuance of the Terre Haute Lease.

XX.

No evidence has been presented by either the Debtor or the Trustees that they have undertaken or made any studies to determine whether coal carrying railroads other than the Terre Haute could be purchased so as to

furnish equivalent service to the trust estate at a cost less than the obligations imposed by the provisions of the Terre Haute lease. Further, no evidence has been presented showing that the Debtor or the Trustees have entered into any negotiations with holders of bonds secured by liens on lines of railway which are subject to the Terre Haute lease, such as are contemplated by the Plans of Reorganization in evidence, providing for modifications of the provisions of said lease. Further no evidence has been presented that either the Debtor or the Trustees have initiated any negotiations concerning the possibility of refunding Bedford Belt bonds or exchanging them for other Terre Haute bonds, as provided in said lease.

A.

That the Chicago, Terre Haute and Southeastern Railway Company, Lessor, has issued, under the laws of Indiana, the state of its incorporation, shares of stock having voting rights now outstanding to the extent of 41,729.95 votes and Income Bonds having voting rights now outstanding to the extent of 63,360 votes, of which voting rights, totaling 105,089.95, the Lessee, through stock ownership of 40,470.95 sharess of stock has 40,470.95 votes and owns or possesses no other voting rights; that the members of its Board of Directors are elected annually and the Board, as presently constituted, consists of five members, three of whom are connected with the organization of Debtor's Estate and two are not; that they elect the corporate officers; that the Lessor, in accordance with Article Five of the lease, maintains and keeps up its corporate existence and organization.

B.

That the said Bedford Belt Railway Company bonds are first lien bonds on the railroad property of The Bedford Belt Railway Company consisting of approximately 14 miles of railroad trackage serving the Bedford Stone Industry which railroad property is a part of the leased railroad and during times of activity in building
1322 construction has afforded net revenue or net benefits to the railroad of the Trust Estate equal to more than twice the $12,500 annual interest charges at the rate of

5% per annum on said $250,000, principal amount, of the said Bedford Belt bonds and that for the year 1936 to date, such property has not been earning such interest charges.

C.

That by the provisions of the lease if the said principal amount of said bonds with interest be promptly paid by the Trustees when due, the Trustees may hold, with their first lien rights uncancelled, said matured bonds as property of the Trust Estate or may, if and when the terms of the lease are being fully complied with, exchange them for an equal principal amount of Chicago, Terre Haute and Southeastern Railway Company first and refunding bonds.

D.

That according to statements made in open court by counsel for the mortgagor and documents filed in this proceeding, it appears that the mortgagor, Chicago, Terre Haute and Southeastern Railway Company, will not have funds with which to pay when due, and is relying upon the Trustees of Debtor's estate to pay, according to their obligations under said lease, said $250,000 principal amount of Bedford Belt Bonds at their maturity, or said $15,907,000 aggregate principal amount of said First and Refunding and Income Bonds, if and when they shall become due and payable, and there is no evidence of record that the Mortgagor will pay said bonds at maturity, or any of them, or will do other than rely upon its rights as Lessor under said lease to have the Trustees of Debtor's estate make such payment, or payments, for the mortgagor as in the lease provided.

XXI.

Proceedings are now pending before the Interstate Commerce Commission in respect to the reorganization of the Debtor. Hearings thereon were held by the Interstate Commerce Commission in Washington, D. C., on August 5, 6 and 7, 1935, on June 16 and September 20, 1937, and on February 1, 2, 3 and 4 and March 21 and 22, 1938. On March 22, 1938, such hearings before the Commission were completed and the record closed, and the

parties were directed to file briefs with the Commission on or before June 1, 1938. Numerous briefs have been filed with the Commission by and on behalf of various parties in interest. The record of the proceedings before the Interstate Commerce Commission consists of 1,666 pages of transcript of evidence and 216 exhibits, many of which exhibits are of large volume and contain elaborate statistical matter.

XXII.

Upon the filing of its petition in bankruptcy with this Court on June 29, 1935, the Debtor filed with the Court and with the Interstate Commerce Commission its proposed Plan of Reorganization, wherein, among other things, it provided that upon reorganization the Terre Haute lease and the obligations of the lessee thereunder to the holders of each of the several bond issues should be modified substantially in respect to then existing defaults in the performance of the covenants under said lease, including the covenant to maintain equipment, and also in regard to the covenant as to the future maintenance and replacement of equipment. It further provided that only upon and in the event of such modifications and alterations in the said lease would the same be assumed by the Reorganized Company. Hearings were held before the Interstate Commerce Commission in respect to this Plan of Reorganization on August 5, 6 and 7, 1935, and on June 16, 1937. On September 10, 1937, the Debtor filed with the Interstate Commerce Commission its petition in which it stated that changes had occurred in conditions since the hearing on June 16, 1937, and that such changes had affected the operating expenses of the Debtor and the feasibility of the Debtor's Plan. At the hearing before the Commission on September 20, 1937, the Debtor advised the Commission, through its counsel, that the Debtor's Plan required substantial amendment before it could be made practicable.

1323

XXIII.

On January 10, 1938, the Group of Institutional Investors filed with the Interstate Commerce Commission a proposed plan of reorganization of the Debtor, which was modified on January 24, 1938, and which was the sub-

ject of hearings before the Commission on February 1, 2, 3 and 4, and on March 21 and 22, 1938. In this plan it was proposed among other things that the properties of the Terre Haute should be merged with the properties of the reorganizaized company and that the Debtor's lease of the Terre Haute should thereby be terminated; that the lien of the new mortgages of the reorganized company should be extended thereto; and that appropriate proceedings should be taken to give effect to such actions in accordance with the requirements of law.

Said plan of reorganization further provided that the holders of each of the issues of bonds constituting a lien on the Terre Haute properties, including the Bedford Belt bonds, should receive in exchange for such bonds First Mortgage Fixed Interest Bonds of the reorganized company for the full principal amount, together with any accrued and unpaid interest at the time of exchange. Under the plan of reorganization this proposed treatment was the most favorable treatment accorded to any of the creditors of the Debtor, the only other creditors receiving similar treatment in accordance with the plan being the Reconstruction Finance Corporation and the holders of First Mortgage Bonds of the Milwaukee & Northern Railway.

The plan of reorganization further provides that in the event that the Commission and the Court declined to approve the proposed consolidation, the existing lease should be so modified as to relieve the defaults existing thereunder by reason of equipment vacancies, and that changes therein should also be made in respect to the obligations to maintain equipment as to the future.

XXIV.

On February 1, 1938, the Debtor filed with the Interstate Commerce Commission its proposed modifications of the plan proposed by the Group of Institutional Investors, wherein it suggested among other things that provision be made in respect to the Terre Haute and the holders of bonds secured by liens on the leased lines, as follows:

> "The Plan contemplates that the properties of the Chicago, Terre Haute and Southeastern Railway System will be consolidated with the properties of

the Reorganized Company; the lien of the new mortgages will be extended thereto; the Debtor's lease of the Chicago, Terre Haute and Southeastern Railway System will be terminated; and appropriate proceedings will be taken to give effect to such actions
1324 in accordance with the requirements of law. In the event that the Interstate Commerce Commission and the Court shall not approve such consolidation in connection with the reorganization, the Plan shall be deemed to reject the lease of the Chicago, Terre Haute and Southeastern Railway System, and the necessary steps will be taken to cause the lessor company to file a petition, pursuant to Section 77 of the Bankruptcy Act as amended, in the reorganization proceedings of the Debtor or otherwise, stating that such company desires to effect a reorganization in connection with, or as a part of the plan of reorganization of, the Debtor. In such event, all shares of stock and other securities of the reorganized lessor company received by the Reorganized Company will be pledged under the mortgage securing the First Mortgage Bonds of the Reorganized Company."

XXV.

On June 10, 1938, the Interstate Commerce Commission, pursuant to Rule XLIX of the Supreme Court of the United States, filed with this Court a copy of the plan of reorganization proposed by the Group of Institutional Investors and a copy of the modifications suggested by the Debtor in respect thereto which had been presented to the Interstate Commerce Commission and made the subject of hearings conducted by that body

XXVI.

No determination has been made by the Interstate Commerce Commission or by this Court as to the fairness of any plan of reorganization by the Debtor, or as to the manner or form in which securities and obligations of the Debtor, including the lease of the Terre Haute, shall be dealt with by the reorganized company under an approved plan of reorganization. All such matters are now under consideration either by the Interstate Com-

merce Commission or by this Court, in accordance with the provisions of Section 77 of the Bankruptcy Act.

XXVII.

The market price of the Terre Haute First and Refunding Mortgage Bonds as of June 11, 1938, was 46 bid and 46½ asked.

XXVIII.

That the Chicago, Terre Haute and Southeastern Railway Company, a corporation of the State of Indiana, was the owner at the time the lease was executed of approximately 360 miles of railroad and appurtenances which, by an instrument of lease it leased on July 1, 1921, for a period of 999 years, to the Chicago, Milwaukee and St. Paul Railway Company, then a corporation of the State of Wisconsin, by the terms of which said lease said Lessee and its successors or assigns were and are required to pay for use of the leased property all taxes and special assessments levied thereon during the period of the lease, interest on and principal at maturity of all outstanding bonds in the hands of the public issued under four separate mortgages, two of which are on parts of the leased property and two on the entire leased property so owned by the Lessor, a sum equal to the corporate expenses of the Lessor not exceeding $12,000 per year, and in addition, required to maintain and preserve the property, including a requirement to replace equipment destroyed or retired by equipment having value equal to the value thereof as of the date of the lease, July 1, 1921.

1325

XXIX.

That no evidence is in the record of the inherent value or probable inherent value of said $250,000 principal amount of bonds apart from the evidence in respect of earnings and benefits derivable by the Trust Estate from the operation of the railroad serving the Bedford Stone Industry and properties and a statement contained in a Plan of Reorganization pending before the Interstate Commerce Commission, copy of which was introduced in this proceeding as part of Exhibit No. 14 by counsel for the Group of Institutional Investors, parties to this pro-

ceeding, the material portion of which statement provides that under said Plan of Reorganization there would be exchanged for the said $250,000 principal amount of said Bedford Belt bonds an equal principal amount of first lien 4% fixed interest bearing bonds of the reorganized company.

XXX.

That there has not been and there is not now any default on the part of the Trustees, as successor lessees under said lease, in the matter of money payments that have become due under the requirements of the lease or under the requirements of any of the said four mortgages in respect of obligations on outstanding bonds not property owned by the Trustees of Debtor's estate.

XXXI.

That there have been retired and not replaced 2672 units of equipment subject to the liens of two or more of said four mortgages which, under the terms of Article Six, Section 2 (c) of the First and Refunding Mortgage of Chicago, Terre Haute and Southeastern Railway Company (Exhibit No. 4) and Article Six; Section 2(d) of Chicago, Terre Haute and Southeastern Railway Company Income Mortgage (Exhibit No. 5) the Trustees of the mortgages, respectively, may require to be replaced by serving notice or demand for such replacement, after which a six month period of grace if allowed at the expiration of which, if replacement has not been made, the Mortgage Trustees may take steps to repossess the property and may declare default under Section 3 of said Article Six; that the evidence does not show that any such notice or demand has been made and counsel for the Chicago, Terre Haute and Southeastern Railway Company, Mortgagor under both of said mortgages, stated of record in this proceeding that no such notice or demand had been given or made.

XXXII.

The Trustees of the property of the Debtor defaulted in the payment of interest on the Debtor's divisional bonds known as Milwaukee and Northern Bonds, which was due June 1, 1938. On November 16, 1937, the Trus-

tees of the Debtor filed their verified petition with this Court requesting authority to pay interest on such bonds due December 1, 1937, in which they stated that "the lines of railroad, subject to the mortgages of the Milwaukee and Northern Railroad Company, are not only earning in excess of their full interest charges, but are, in addition, contributing a further substantial sum to the system's earnings." At other times during the pendency of this proceeding before this Court, the Trustees have filed petitions requesting authority to pay other interest due on said Milwaukee and Northern Bonds at their several due dates, in which they have stated that, in their opinion, the lines subject to the mortgages of the Milwaukee and Northern Railroad Company are not
1326 only earning in excess of their full interest charges, but are also making substantial contributions to the earnings of the trust estate.

There were no objections to the findings numbered I to XX, inclusive, and A, B, C and D, and XXIX, XXX and XXXI.

Counsel for the Trustees objected to findings numbered XXI, to XXVII, inclusive, on the ground of immateriality.

Counsel for the Trustees objected to finding numbered XXVIII on the ground that certain words have been omitted from the finding as requested by counsel for the Trustees. The finding as requested by counsel for the Trustees is as follows:

"That the Chicago, Terre Haute and Southeastern Railway Company, a corporation of the State of Indiana, is the owner of approximately 360 miles of railroad and appurtenances which, by an instrument of lease and conditional sale, it leased, on July 1, 1921, for a period of 999 years, to the Chicago, Milwaukee and St. Paul Railway Company, then a corporation of the State of Wisconsin, by the terms of which said lease said Lessee and its successors or assigns were and are, prior to consummation of the conditional sale, required to pay as rental or compensation for use of the leased property all taxes and special assessments levied thereon during the period of the lease, interest on and principal at maturity of all outstanding bonds in the hands of the public issued under four separate mortgages, two

of which are on parts of the leased property and two on the entire leased property so owned by the Lessor, a sum equal to the corporate expenses of the Lessor not exceeding $12,000 per year, and in addition, required to maintain and preserve the property, including a requirement to replace equipment destroyed or retired by equipment having value equal to the value thereof as of the date of the lease, July 1, 1921."

Counsel for the Trustees objected to finding numbered XXXII because of immateriality and otherwise.

Counsel for the Trustees have saved an exception to each of the rulings with reference to findings to which they have objected.

James H. Wilkerson,
28 June, 1938. *United States District Judge.*

Filed June 28, 1938.

1310 And on, to wit, the 28th day of June, A. D. 1938, came the Court and filed in the Clerk's office of said Court its certain Conclusions of Law, in words and figures following, to wit:

1311 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

CONCLUSIONS OF LAW.

The Court finds that the objections to the payment of the principal of the Bedford Belt Bonds at their maturity on July 1, 1938, should be sustained; that such action is proper in order that there may be a reasonable period of time during which it can be determined by plan or otherwise whether the Terre Haute lease should be affirmed or disaffirmed; that the Court has authority to protect and preserve the trust estate pending the adoption of a plan of reorganization and to make such orders with reference to the lease and the estate of the debtor as are necessary to accomplish that purpose; and that the rights of the owners of the Bedford Belt Bonds, in the event of a disaffirmance of the lease or the dismissal of these proceedings, are adequately protected by statute.

James H. Wilkerson,
28 June, 1938. *United States District Judge.*

1312 And afterwards, to wit, on the 28th day of June, A. D. 1938, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Entered June 28, 1938.

1313

Order No. 377.

[This order entered on petition appearing at page 3973.]

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

DECREE.

This cause coming on to be heard upon the petition of the Trustees of the property of the Debtor for instructions in respect to the maturity on July 1, 1938, of bonds of The Bedford Belt Railway Company outstanding in the hands of the public in the amount of $250,000, and upon the several answers of the parties and petitions of intervention filed by leave of Court herein, and the Trustees having filed in this Court their report of compliance with the order of the Court entered herein on May 27, 1938, respecting publication of notice of hearing to all creditors and stockholders of the Debtor, to the Trustee of The Bedford Belt Railway Company First Mortgage, to all holders of the First Mortgage Gold Bonds issued under said mortgage maturing July 1, 1938, and to all other parties in interest, and the Court having considered the verified petition, the answers of the parties and the petitions of intervention, and having heard evidence offered by the Trustees and other parties hereto, both written and oral, statements and oral argument of counsel, and having received written briefs, memoranda and suggestions of counsel in support of their petitions, several answers and petitions of intervention, and being fully advised in the premises, and the Court having found the facts specially and stated separately its conclusions of law thereon, both of which are hereby made a part of this decree, it is hereby

Ordered, found, adjudged and decreed that:

(1) The Trustees of the property of the Debtor be

and they are hereby instructed not to use the funds of the trust estate at this time and until the further order of the Court for the purpose of paying the principal or any part thereof of First Mortgage Gold Bonds of The Bedford Belt Railway Company which mature July 1, 1938.

(2) That pending further order of this Court the Trustees shall make semi-annual payments of interest on such of said bonds of The Bedford Belt Railway Company outstanding in the hands of the public as shall be presented to them for appropriate endorsement at the annual rate of 5 per cent beginning on July 1, 1938.

(3) Nothing in this order shall be construed as a disaffirmance of the lease from the Chicago, Terre Haute and Southeastern Railway Company to the Chicago, Milwaukee & St. Paul Railway Company, its successors and assigns, dated July 1, 1921, or to preclude or conclude the Trustees or the Debtor in respect to their several rights of election to disaffirm or discontinue the same.

(4) The Court reserves full right at any time by such further orders in the premises as the Court may deem proper to amend, extend, limit, modify, or otherwise change or rescind the present order.

Enter:

James H. Wilkerson,
District Judge.

Dated June 28, 1938.

Entered July 13, 1938.

1332 And afterwards, to wit, on the 13th day of July, A. D. 1938, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

1333 Order No. 377-A.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER MODIFYING FINDING OF FACT NUMBERED XV IN THE FORM ENTERED JUNE 28, 1938.

This day coming on to be heard the Motion of the Chicago, Terre Haute and Southeastern Railway Company for an order modifying the Finding of Fact numbered XV,

entered by the Court on June 28, 1938, in the form and substance jointly agreed to by Counsel for the Group of Institutional Investors, party to this proceeding, and Counsel for Trustees of the property of Debtor Company, to read when modified as follows:

"XV.

With the leasing of the properties of the Terre Haute, its operations and accounts were consolidated with those of the Milwaukee. When the Debtor filed its petition in bankruptcy, it was thought desirable to keep, in addition to the consolidated accounts, separate books and accounting records that would show the earning value of the Terre Haute to the Milwaukee and such separate books and accounting records have been kept since July 1, 1935. These records, in the opinion of W. W. K. Sparrow, Officer of the Trustees in charge of Finance, Accounting and Real Estate, and formerly Vice-President of the Debtor, would show the earning power of the leased lines to the Debtor's railroad system based upon (1) revenues earned from the operation of such leased lines in handling commercial business, and (2) an assumed credit to the leased lines of revenues at current tariff rates on company fuel and other company material hauled thereover and used in the operations of the Debtor's lines beyond Chicago. On this basis he showed that the net income to the Debtor's Estate after payment of rental on the leased lines amounted to $1,966,546 for the year 1936, and to $1,820,687 for the year 1937. During these two years the amount of coal for operation of the Trust Estate transported over the leased lines was 2,049,747 tons in 1936 and 2,019,181 tons in 1937. In the proceeding before the Interstate Commerce Commission for the reorganization of the Debtor, the Bureau of Valuation by order of the Commission, pursuant to Section 77 (c) of the Bankruptcy Act, filed its findings of the elements of value as of December 31, 1935, of the Terre Haute, including all properties covered by the lease, which showed cost of reproduction less depreciation to be $19,357,027 and the value of lands and rights to be $1,323,087."

and the Court having heard Counsel for the Chicago, Terre Haute and Southeastern Railway Company, Counsel for said Group of Institutional Investors and Counsel for said Trustees, appearing and consenting to such modification, and the Court being fully advised in the premises, it is

Ordered, that Finding of Fact numbered XV, entered herein on the 28th day of June, 1938, be, and it is, modified to read as follows:

1334 "XV.

With the leasing of the properties of the Terre Haute, its operations and accounts were consolidated with those of the Milwaukee. When the Debtor filed its petition in bankruptcy, it was thought desirable to keep, in addition to the consolidated accounts, separate books and accounting records that would show the earning value of the Terre Haute to the Milwaukee and such separate books and accounting records have been kept since July 1, 1935. These records, in the opinion of W. W. K. Sparrow, Officer of the Trustees in charge of Finance, Accounting and Real Estate, and formerly Vice-President of the Debtor, would show the earning power of the leased lines to the Debtor's railroad system based upon (1) revenues earned from the operation of such leased lines in handling commercial business, and (2) an assumed credit to the leased lines of revenues at current tariff rates on company fuel and other company material hauled thereover and used in the operations of the Debtor's lines beyond Chicago. On this basis he showed that the net income to the Debtor's Estate after payment of rental on the leased lines amounted to $1,966,546 for the year 1936, and to $1,820,687 for the year 1937. During these two years the amount of coal for operation of the Trust Estate transported over the leased lines was 2,049,747 tons in 1936 and 2,019,181 tons in 1937. In the proceeding before the Interstate Commerce Commission for the reorganization of the Debtor, the Bureau of Valuation by order of the Commission, pursuant to Section 77 (c) of the Bankruptcy Act, filed its findings of the elements of value as of December 31, 1935, of the Terre Haute, including all properties covered by the lease, which showed cost of reproduction less depreciation to be $19,357,027 and the value of lands and rights to be $1,323,087."

Enter:

James H. Wilkerson.
District Judge.

Dated July 13th, 1938.

1335 And afterwards, to wit, on the 15th day of July, A. D. 1938, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Entered July 15, 1938.

1336 Order No. 399.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

ORDER EXTENDING TIME WITHIN WHICH TO ELECT WHETHER TO ADOPT OR DISAFFIRM CONTRACTS TO AND INCLUDING JANUARY 31, 1939.

This day coming on to be heard the oral motion of Counsel for Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, for an order extending the time within which the Trustees may elect whether to adopt or disaffirm leases, agreements or contracts, and it being represented that the Trustees have not as yet fully completed the examination of the Leases, the Agreements and Contracts to which the Debtor is a party, or under which it may be obligated, in order to determine whether to elect to adopt or disaffirm same within the time fixed by the Order of this Court entered herein on January 21, 1938, and it appearing that Notice of said Motion has been served on each party to this proceeding entitled to notice, and the Court having considered the Motion, heard the Statements of Counsel, and being fully advised in the premises, it is

Ordered, that the time fixed by Order entered herein January 21, 1938 within which the Trustees may elect whether to adopt or continue in force, or to refuse to adopt or continue in force, or to disaffirm or reject, any lease, trackage, terminal, crossing or operating agreement, or other contract not fully performed, to which the Debtor is a party, or under which it may be obligated, shall be extended to and including January 31, 1939.

Except as hereby modified, Paragraph (4) of the Order entered herein June 29, 1935, shall remain in full force and effect.

The Court reserves full right at any time upon such further orders in the premises, as the Court may deem proper, to amend, modify, or otherwise change or rescind the present Order.

Enter:

James H. Wilkerson,
District Judge.

Dated July 15, 1938.

Entered Jan. 12, 1939.

1375 And afterwards, to wit, on the 12th day of January, A. D. 1939, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly District Judge, appears the following entry, to wit:

1376 Order No. 447.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER EXTENDING TIME WITHIN WHICH TO ELECT WHETHER TO ADOPT OR DISAFFIRM CONTRACTS TO AND INCLUDING JULY 31, 1939.

This day coming on to be heard the oral motion of Counsel for Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, for an order extending the time within which to elect whether to adopt or disaffirm leases, agreements or contracts, and it being represented that the Trustees have not as yet fully completed the examination of the leases, the agreements and contracts to which the Debtor is a party, or under which it may be obligated, in order to determine whether to elect to adopt or disaffirm same within the time fixed by the order of this Court entered herein on July 15, 1938, and it appearing that Notice of said Motion has been served on each party to this proceeding entitled to notice, and the Court having considered the motion, heard the statements of Counsel and being fully advised in the premises, it is

Ordered, that the time fixed by order entered herein July

15, 1938, within which the Trustees may elect whether to adopt or continue in force, or to refuse to adopt or continue in force, or to disaffirm or reject, any lease, trackage, terminal, crossing or operating agreement, or other contract not fully performed, to which the Debtor is a party, or under which it may be obligated, shall be extended to and including July 31, 1939.

Except as hereby modified, Paragraph (4) of the order entered herein June 29, 1935, shall remain in full force and effect.

The Court reserves full right at any time, upon such further orders in the premises as the Court may deem proper, to amend, modify, or otherwise change or rescind the present order.

Enter:

Holly,
District Judge.

Dated January 12, 1939.

(Notice of motion omitted in printing.)

1401 And on, to wit, the 21st day of February, A. D. 1939 came the Trustees by Their attorneys and filed in the Clerk's office of said Court Their certain Petition in words and figures following, to wit: Filed Feb. 21, 1939.

1402 Petition for Order No. .....

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

PETITION OF TRUSTEES FOR APPROVAL OF IMPROVEMENT BUDGET FOR THE YEAR 1939.

The petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, respectfully represents:

1. Your Petitioners submit herewith for approval of the Court Improvement Budget Items and costs for the year 1939.

2. Attached hereto and made a part hereof as Exhibit "A" is a description of the Budget items and costs.

3. On account of the low level of revenues which con-

tinued throughout the year 1938 and may continue for part of the year 1939, Petitioners have confined their recommendations for Capital Expenditures in the year 1939 to what is considered to be the necessary requirements. The one thousand freight cars and seventy-five cabooses will be constructed in the Milwaukee Shops of the Trust Estate and will be constructed as satisfactorily as and at a substantially lower out-of-pocket cost than if purchased from outside car builders. This construction work will be performed without interfering with shop repair work.

1403 4. Petitioners further state that the proposed Budget expenditures for the year 1939, exclusive of expenditures for the said new equipment necessary to meet the transportation requirements of the System, aggregating $7,347,424, are for necessary rail, ballast and bridge programs, the cost of improvements to existing equipment and the cost of certain ordinary improvements, the items and costs of all of which appear in Exhibit "A."

5. Your Petitioners are of the opinion that the proposed expenditures, for which authorization of the Court is here sought, are necessary and that the proposed improvements, substantially as herein set forth, subject only to such slight changes as may be found economical, would be in the interest of the Trust Estate, its creditors and stockholders.

Wherefore, Petitioners pray that an order be entered authorizing expenditures chargeable to Investment Account in the aggregate sum of $8,317,908 for the aforesaid improvements and authorizing such improvements to be made during the year 1939 to the railroad property of the Trust Estate as herein and in said Exhibit "A" set forth, subject only to such slight changes as may be found economical and which will not increase the total cost and will be of benefit to the Trust Estate.

Henry A. Scandrett,
Walter J. Cummings,
George I. Haight,
Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

By George I. Haight,
One of said Trustees.

O. W. Dynes and C. S. Jefferson,
Attorneys for Trustees.

1404 United States of America,
Northern District of Illinois, } ss.
Eastern Division.

O. W. Dynes, being duly sworn, upon his oath deposes and says that he is Counsel for Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Petitioners in the foregoing petition; that he has read the foregoing petition and knows the contents thereof and that the facts alleged therein are true as he verily believes.

O. W. Dynes,

Subscribed and Sworn to before me this 10th day of February, 1939.

R. W. Spangenberg,
(Seal) *Notary Public, Cook County, Illinois.*

My Commission Expires June 7, 1939.

Filed ..... Clerk

EXHIBIT "A"
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY
Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees
IMPROVEMENT BUDGET FOR 1939

DESCRIPTION	ESTIMATED COSTS		
	Investment Account	Operating Expenses Less Salvage	Total Less Salvage
ROAD AND EXISTING EQUIPMENT			
Rail Program:—			
30,000 gross tons new rail or 156.57 miles and 21,061 gross tons second hand rail or 149.03 miles, including fastenings, turnouts, tie plates, rail anchors, additional ties, incidental signal work and all labor of application	$1,158,162	$1,336,896	$2,495,058
Tie plates, rail, anchors and R. R. crossings for application at various locations outside of the relay rail limits. Includes all labor of application	653,806	87,999	741,805
Ballast Program:—529,148 cu. yds. or 270.87 miles	111,534	386,739	498,273
Bridge Program:—Renew Missouri River bridge at Kansas City. Total estimated cost, $1,251,000. Estimated expenditure in 1939—$600,000	423,000	177,000	600,000
Replace, renew or strengthen 484 other bridges	1,407,919	310,833	1,718,752
Reconstruct Mannheim Road Viaduct at Franklin Park, Ill. The Railroad Company's proportion of a total estimated expenditure of $449,000	51,000	49,000	100,000
Construct a 20 car capacity fruit house at St. Paul, Minn	110,000	—	110,000
Make additions and improvements to Wheel Foundry Building to permit consolidation of all foundry work in one building at Milwaukee, Wis	107,915	8,710	116,625
Modernize passenger station at Minneapolis, Minn	45,000	5,000	50,000
Purchase and install Firebar grates in 192 locomotives	48,706	43,698	92,404
Equip 64 cars as work equipment for 1939 roadway gangs	38,500	6,744	45,244
Improvements to and conversions of passenger equipment as recommended by the Passenger Train Car Committee	138,257	63,875	202,132
Other Improvements to Existing Equipment	278,511	62,299	340,810
Total Major Improvements	4,572,310	2,538,793	7,111,103
Ordinary Improvements:			
Class 1—Widening cuts and fills, roadbed protection, tiling wet cuts, minor line changes, etc	125,263	17,789	143,052
5—Tunnels	5,520	1,200	6,720
7—Elimination of grade crossings	45,959	539	46,498
8—Grade crossings, crossing signals and renewal of overhead crossings	282,451	58,909	341,360
10—Industrial and other tracks	260,475	21,363	281,838
12—Signals and Interlocking plants	148,315	13,798	162,113
13—Telegraph and telephone lines	66,023	8,767	74,790
14—Roadway machinery and tools	72,952	249	73,201
15—Roadway buildings	8,379	—	8,379
16—Fences and snowsheds	127,445	2,456	129,901
17—Freight and passenger stations, platforms, stockyards and other station facilities	486,418	21,580	507,998
19—Fuel stations and appurtenances	38,232	3,872	42,104
20—Water stations and appurtenances	141,372	417 Cr.	140,955
21—Shop buildings, enginehouses and appurtenances	508,426	42,136	550,562
22—Shop machinery and tools	332,459	15,397 Cr.	317,062
23—Electric power plants, substations, transmission and distribution lines	90,616	3,726	94,342
28—Assessments for public improvements	20,000	—	20,000
34—Other improvements	14,809	—	14,809
Total Ordinary Improvements	$2,775,114	$ 180,570	$2,955,684
TOTAL—ROAD AND EXISTING EQUIPMENT	$7,347,424	$2,719,363	$10,066,787

NEW EQUIPMENT		
Freight Cars—1,000—40′ 6″ 50 ton capacity, all steel, wood lined, box cars	$2,500,000	
75—Cabooses	262,500	
Total	$2,762,500	
To be financed through sale of equipment trust certificates	$1,920,000	
To be financed out of Railroad Company funds		$ 842,500
Snow Fighting Equipment—3 Russell plows, 12 snow plows and 5 flangers		51,834
Wrecking Equipment —1-200 ton steam wrecking derrick		76,150

EXHIBIT "A"

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY
Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees
IMPROVEMENT BUDGET FOR 1939

DESCRIPTION		ESTIMATED COSTS		
		Investment Account	Operating Expenses Less Salvage	Total Less Salvage
ROAD AND EXISTING EQUIPMENT				
Rail Program:—				
30,000 gross tons new rail or 156.57 miles and 21,061 gross tons second hand rail or 149.03 miles, including fastenings, turnouts, tie plates, rail anchors, additional ties, incidental signal work and all labor of application		$1,158,162.	$1,336,896.	$2,495,058.
Tie plates, rail, anchors and R. R. crossings for application at various locations outside of the relay rail limits. Includes all labor of application		653,806.	87,999.	741,805.
Ballast Program:—529,148 cu. yds. or 270.87 miles		111,534.	386,739.	498,273.
Bridge Program:—Renew Missouri River bridge at Kansas City. Total estimated cost, $1,251,000. Estimated expenditure in 1939—$600,000		423,000.	177,000.	600,000.
Replace, renew or strengthen 484 other bridges		1,407,919.	310,833.	1,718,752.
Reconstruct Mannheim Road Viaduct at Franklin Park, Ill. The Railroad Company's proportion of a total estimated expenditure of $449,000		51,000.	49,000.	100,000.
Construct a 20 car capacity fruit house at St. Paul, Minn		110,000.	—	110,000.
Make additions and improvements to Wheel Foundry Building to permit consolidation of all foundry work in one building at Milwaukee, Wis		107,915.	8,710.	116,625.
Modernize passenger station at Minneapolis, Minn		45,000.	5,000.	50,000.
Purchase and install Firebar grates in 192 locomotives		48,706.	43,698.	92,404.
Equip 64 cars as work equipment for 1939 roadway gangs		38,500.	6,744.	45,244.
Improvements to and conversions of passenger equipment as recommended by the Passenger Train Car Committee		138,257.	63,875.	202,132.
Other Improvements to Existing Equipment		278,511.	62,299.	340,810.
Total Major Improvements		4,572,310.	2,538,793.	7,111,103.
Ordinary Improvements:				
Class 1—Widening cuts and fills, roadbed protection, tiling wet cuts, minor line changes, etc		125,263.	17,789.	143,052.
5—Tunnels		5,520.	1,200.	6,720.
7—Elimination of grade crossings		45,959.	539.	46,498.
8—Grade crossings, crossing signals and renewal of overhead crossings		282,451.	58,909.	341,360.
10—Industrial and other tracks		260,475.	21,363.	281,838.
12—Signals and Interlocking plants		148,315.	13,798.	162,113.
13—Telegraph and telephone lines		66,023.	8,767.	74,790.
14—Roadway machinery and tools		72,952.	249.	73,201.
15—Roadway buildings		8,379.	—	8,379.
16—Fences and snowsheds		127,445.	2,456.	129,901.
17—Freight and passenger stations, platforms, stockyards and other station facilities		486,418.	21,580.	507,998.
19—Fuel stations and appurtenances		38,232.	3,872.	42,104.
20—Water stations and appurtenances		141,372.	417. Cr.	140,955.
21—Shop buildings, enginehouses and appurtenances		508,426.	42,136.	550,562.
22—Shop machinery and tools		332,459.	15,397. Cr.	317,062.
23—Electric power plants, substations, transmission and distribution lines		90,616.	3,726.	94,342.
28—Assessments for public improvements		20,000.	—	20,000.
34—Other improvements		14,809.	—	14,809.
Total Ordinary Improvements		$2,775,114.	$ 180,570.	$2,955,684.
TOTAL—ROAD AND EXISTING EQUIPMENT		$7,347,424.	$2,719,363.	$10,066,787.
NEW EQUIPMENT				
Freight Cars—1,000—40' 6" 50 ton capacity, all steel, wood lined, box cars	$2,500,000.			
75—Cabooses	262,500.			
Total	$2,762,500.			
To be financed through sale of equipment trust certificates	$1,920,000.			
To be financed out of Railroad Company funds		$ 842,500.		
Snow Fighting Equipment—3 Russell plows, 12 snow plows and 5 flangers		51,834.		
Wrecking Equipment —1-200 ton steam wrecking derrick		76,150.		
TOTAL—NEW EQUIPMENT		$ 970,484.	$ 970,484.	— $ 970,484.
TOTAL BUDGET TO BE PROVIDED FROM RAILROAD COMPANY FUNDS			$8,317,908.	$2,719,363. $11,037,271.

1406 Endorsed: District Court of United States. * * (Caption—60463) * * Petition of Trustees for Approval of Improvement Budget for the Year 1939. Filed Feb. 21, 1939, Hoyt King, Clerk.

367 And afterwards, to wit, on the 21st day of February, A. D. 1939, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Ente Feb. 1939

368 Order No. 460.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER APPROVING IMPROVEMENT BUDGET FOR THE YEAR 1939.

This day coming on to be heard the verified petition of the Trustees for an Order approving the proposed Improvement Budget of the property of the Trust Estate for the year 1939, prepared under the direction of the Trustees thereof, and it appearing that a copy of said petition, to which was attached as an exhibit and marked Exhibit "A" a description of the proposed Budget items and costs, has been served on each party to this proceeding entitled to notice, and that a copy of said Exhibit has been filed herein, and the Court having considered the petition, heard the statements of Counsel, and being fully advised in the premises, it is

Ordered, that the proposed expenditures in the aggregate sum of $8,317,908 chargeable to Investment Account, as specified in said Exhibit "A" on file herein, are approved and the Trustees are authorized to make such improvements during the year 1939 to the railroad property of the Trust Estate as are in said petition and in said Exhibit "A" set forth, subject only to such slight changes as may be found economical and which will not increase the total cost and will be of benefit to the Trust Estate.

Enter:

James H. Wilkerson,
District Judge.

Dated February 21, 1939.

Entered Mar. 31, 1939.

374 And afterwards, to wit, on the 31st day of March, A. D. 1939, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

375 Order No. 479.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

ORDER AUTHORIZING TRUSTEES TO ENTER INTO CONDITIONAL SALES CONTRACTS FOR THE PURCHASE OF SIX DIESEL SWITCHING LOCOMOTIVES.

This day coming on to be heard the verified petition of the Trustees for authority to purchase on a conditional sales contract from the American Locomotive Company two (2) new six hundred horsepower Diesel switching locomotives at a cost of $62,350 each, f. o. b. Cedar Rapids, Iowa, payable in ninety-six (96) equal monthly installments of $1,462.68 each, including interest at three per cent (3%) per annum, and to purchase on a conditional sales contract from the Electro Motive Corporation two (2) one thousand horsepower Diesel switching locomotives at a cost of $84,575 each, f. o. b. Milwaukee, Wisconsin, and two (2) six hundred horsepower Diesel switching locomotives at a cost of $62,470 each, f. o. b. Milwaukee, Wisconsin, payable in ninety-six (96) equal monthly installments of $3,449.55 each, including interest at the rate of three per cent (3%) per annum, and it appearing from said petition that the purchase of the six Diesel switching locomotives is for the purpose of improving the switching operations and effecting economies on the railroad of the Trust Estate at Cedar Rapids, Iowa, and Milwaukee, Wisconsin, and that the Trustees deem it to be consistent with the interest of the Trust Estate, its creditors and stockholders that the said switching locomotives be purchased, and it also appearing that a copy of said petition, to which are attached the form of a conditional sales contract with the American Locomotive Company as Exhibit "A" and the form

of a conditional sales contract with the Electro Motive Corporation as Exhibit "B", has been served on each party to this proceeding entitled to notice, and the Court having considered the petition, heard the statements of Counsel and being fully advised in the premises, it is

Ordered, that Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, be, and they are hereby, authorized to purchase on a conditional sales contract from the American Locomotive Company two (2) new six hundred horsepower Diesel switching locomotives at a cost of $62,350 each, f. o. b. Cedar Rapids, Iowa, payable in ninety-six (96) equal monthly installments of $1,462.68 each, including interest at three per cent (3%) per annum, and to purchase on a conditional sales contract from the Electro Motive Corpo-
ration two (2) one thousand horsepower Diesel switch-
376 ing locomotives at a cost of $84,575 each, f. o. b. Mil-
waukee, Wisconsin, and two (2) six hundred horsepower Diesel switching locomotives at a cost of $62,470 each, f. o. b. Milwaukee, Wisconsin, payable in ninety-six (96) equal monthly installments of $3,449.55 each, including interest at the rate of three per cent (3%) per annum, said conditional sales contract with the American Locomotive Company to be substantially in the manner and form as set forth in the copy of the conditional sales contract attached to and made a part of the said petition and marked Exhibit "A", and said conditional sales contract with the Electro Motive Corporation to be substantially in the manner and form as set forth in the copy of the conditional sales contract attached to and made a part of the said petition and marked Exhibit "B", all of said monthly payments to be made from funds in hand derived from operation of the property of the Trust Estate.

Enter:

James H. Wilkerson,
District Judge.

Dated March 31, 1939.

Entered Apr. 14, 1939.

377 And afterwards, to wit, on the 14th day of April, A. D. 1939, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

378 Order No. 479-A.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

ORDER AMENDING AND SUPPLEMENTING ORDER ENTERED HEREIN MARCH 31, 1939, AUTHORIZING TRUSTEES TO ENTER INTO CONDITIONAL SALES CONTRACTS FOR THE PURCHASE OF SIX DIESEL SWITCHING LOCOMOTIVES.

This day coming on to be heard the oral motion of Counsel for Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, for an order amending and supplementing nunc pro tunc as of March 31, 1939 the order entered herein March 31, 1939, authorizing said Trustees to enter into conditional sales contracts for the purchase of six Diesel switching locomotives, and it being represented to the Court that it is necessary that the aforesaid order entered March 31, 1939 be amended and supplemented to comply with the requirements of the provisions of paragraph (12) of the proposed conditional sales contracts attached to and made a part of the petition of said Trustees, filed herein March 31, 1939 as Exhibits "A" and "B" thereto, and it appearing that notice of said motion has been served on each party to this proceeding entitled to notice and the Court having considered the motion, heard the statements of Counsel and being fully advised in the premises, it is

Ordered, that the said order entered herein March 31, 1939 be, and it is hereby, amended and supplemented nunc pro tunc as of March 31, 1939 by the addition thereto of the following:

"It Is Further Ordered, that the trusteeship of the Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein,

shall not be terminated nor shall the trusteeship estate thereunder be surrendered by the Trustees or their successor, or successors, unless as a condition to the termination of the trusteeship of Debtor herein, whether pursuant to a plan of reorganization or otherwise, all the obligations then existing or to accrue of the Trustees herein under said conditional sales contracts shall be assumed as a general obligation by Debtor herein, or by any other corporation or any receiver or receivers in equity that shall succeed to the Trustees herein in the possession of not less than 75% of the owned lines of railroad comprising the Trust Estate. In case of any sale or conveyance of not less than 75% of all of said owned lines of railroad, the purchaser or transferee of the purchaser shall not be at liberty to refuse to accept said conditional sales contracts or to disaffirm the same (but if acquiring not less than 75% of all of said owned lines of railroad for the purpose of transferring them to a corporation formed for the purpose of reorganization, any such
379 purchaser shall not incur any personal liability under or in respect of said conditional sales contracts, provided such transferee corporation shall assume, as a general obligation, all the obligations of the Trustees herein under said conditional sales contracts). In case any corporation, or any receiver or receivers in equity, shall so succeed the Trustees herein in the possession of not less than 75% of all of said owned lines of railroad, and shall assume, as a general obligation, all the obligations of the Trustees herein then existing and to accure under said conditional sales contracts, the Trustees herein shall thereupon be relieved from any further liability under or in respect of said conditional sales contracts. In the event that upon the confirmation of a plan of reorganization, or upon the dismissal or termination of this proceeding, neither the Debtor nor any other corporation, or receiver or receivers in equity, shall alone succeed to the possession of 75% of all of said owned lines of railroad, then all of the unpaid installments of the purchase price under said conditional sales contracts, together with accrued interest thereon, and all of the other obligations and liabilities of the Trustees herein under said conditional sales contracts shall become immediately due and payable on the date of such con-

firmation, dismissal or termination, and the Court will make such provision for the payment thereof as will be equitable."

Except, as hereby modified and supplemented, the said order entered herein March 31, 1939 shall remain in full force and effect.

Enter:

James H. Wilkerson,
District Judge.

Dated April 14, 1939.

Entered July 20, 1939.

410 And afterwards, to wit, on the 20th day of July, A. D. 1939, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

411 Order No. 529.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER EXTENDING TIME WITHIN WHICH TO ELECT WHETHER TO ADOPT OR DISAFFIRM CONTRACTS TO AND INCLUDING JANUARY 31, 1940.

This day coming on to be heard the oral motion of Counsel for Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, for an order extending the time within which to elect whether to adopt or disaffirm leases, agreements or contracts, and it being represented that the Trustees have not as yet fully completed the examination of the leases, the agreements and contracts to which the Debtor is a party, or under which it may be obligated, in order to determine whether to elect to adopt or disaffirm same within the time fixed by the order of this Court entered herein on January 12, 1939, and it appearing that Notice of said Motion has been served on each party to this proceeding entitled to notice, and the Court having considered the mo-

tion, heard the statements of Counsel and being fully advised in the premises, it is

Ordered, that the time fixed by order entered herein January 12, 1939, within which the Trustees may elect whether to adopt or continue in force, or to refuse to adopt or continue in force, or to disaffirm or reject, any lease, trackage, terminal, crossing or operating agreement, or other contract not fully performed, to which the Debtor is a party, or under which it may be obligated, shall be extended to and including January 31, 1940.

Except as hereby modified, Paragraph (4) of the order entered herein June 29, 1935, shall remain in full force and effect.

The Court reserves full right at any time, upon such further orders in the premises as the Court may deem proper, to amend, modify, or otherwise change or rescind the present order.

Enter:

James H. Wilkerson,
District Judge.

Dated July 20, 1939.

412 And on, to wit, the 28th day of July, A. D. 1939 came the Trustees by Their attorneys and filed in the Clerk's office of said Court Their certain Petition in words and figures following, to wit: Filed July 28, 1939.

413 Petition for Order No. 533.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

Petition of Trustees for Authority to Apply to the Interstate Commerce Commission for a Certificate of Public Convenience and Necessity Authorizing Abandonment of Approximately 35 Miles of Branch Line Railroad Between Eldridge, in Scott County, and Oxford Junction, in Jones County, and Approximately 17 Miles of the Same Branch Line Between Wyoming and Monticello, in Jones County, All in the State of Iowa, and for Authority to Abandon Same If Such Certificate Be Obtained.

The petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of

Chicago, Milwaukee, St. Paul and Pacific Railroad Company, respectfully represents:

1. The Trustees, Petitioners herein, desire to make application to the Interstate Commerce Commission for a certificate of public convenience and necessity permitting abandonment (a) of a portion of branch line railroad, approximately 35 miles in length, between Eldridge, in Scott County, and Oxford Junction, in Jones County, and (b) of a portion of branch line railroad, approximately 17 miles in length, between Wyoming and Monticello, in Jones County, all in the State of Iowa, which portions of branch line proposed to be abandoned are now being operated in interstate and intrastate commerce by the Trustees.

2. The area in which said branch line lies is served by carriers operating on highways and their competition with railroad service has so reduced the tonnage of railroad freight transported and passenger revenues that the portions of branch line proposed to be abandoned are now being operated at a substantial out-of-pocket loss to the Trust Estate.

3. A study shows that operation of the portions of line sought to be abandoned (Eldridge to Oxford Junction, 35 miles) and (Wyoming to Monticello, 17 miles) on the basis of assigning to the line 25% of system revenues from traffic originating and terminating at stations on the line and estimating expense of handling the traffic over other portions of the system at 50% of the system revenues, resulted in a loss of approximately $41,700 in 1938. On the same basis, the losses in 1937 for the two portions of the line sought to be abandoned were approximately $48,000.

4. If the portions of branch line are abandoned, the public will not be without adequate transportation service.

5. Petitioners believe there is no prospect of a sufficient increase in traffic becoming available to the portions of
414 line sought to be abandoned to afford profitable operation thereof in the future and believe that continued operation of those portions of line would result in continued annual losses.

6. Petitioners believe it is in the interest of the Trust Estate, its creditors and stockholders that said portions of line be abandoned and believe their abandonment will not unduly or adversely affect the public interest.

Wherefore, Petitioners pray that your Trustees, Petitioners herein, be authorized to make application to the

Interstate Commerce Commission for a certificate of public convenience and necessity to abandon said portions of line and to take all necessary steps and execute all necessary documents incident thereto and for authority, upon obtaining such certificate, to abandon said portions of line and to take all necessary steps incident thereto.

Henry A. Scandrett,
Walter J. Cummings,
George I. Haight,
Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
By Henry A. Scandrett,
One of said Trustees.

O. W. Dynes and
C. S. Jefferson,
Attorneys for Trustees.

[Verification omitted in printing.]

Filed July 28, 1939. Hoyt King, Clerk.

420 And afterwards, to wit, on the 28th day of July, A. D. 1939, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Entered July 28, 1939.

421 Order No. 533.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

Order Authorizing Trustees to Make Application to the Interstate Commerce Commission for a Certificate of Public Convenience and Necessity Authorizing Abandonment of Approximately 35 Miles of Branch Line Railroad Between Eldridge, in Scott County, and Oxford Junction, in Jones County, and Approximately 17 Miles of the Same Branch Line Between Wyoming and Monticello, in Jones County, All in the State of Iowa, and Authorizing Said Abandonments If Such Certificate Be Obtained.

This day coming on to be heard the verified petition of Henry A. Scandrett, Walter J. Cummings and George I.

Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, for authority to make application to the Interstate Commerce Commission for a Certificate of Public Convenience and Necessity authorizing the abandonment of approximately 35 miles of branch line railroad of the Trust Estate between Eldridge, in Scott County, and Oxford Junction, in Jones County, and approximately 17 miles of the same branch line between Wyoming and Monticello, in Jones County, all in the State of Iowa, and for authority upon obtaining such Certificate to abandon said branch line, and it appearing that due notice and a copy of said petition have been served on all parties to this proceeding entitled to notice, and the Court having heard the statements of Counsel and being fully advised in the premises, it is

Ordered, that Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, be, and they are hereby, authorized to make, verify and file an application to the Interstate Commerce Commission, together with supporting data and documents for a Certificate of Public Convenience and Necessity authorizing the abandonment of approximately 35 miles of branch line railroad of the Trust Estate between Eldridge, in Scott County, and Oxford Junction, in Jones County, and approximately 17 miles of the same branch line between Wyoming and Monticello, in Jones County, all in the State of Iowa, and that, upon obtaining such Certificate of Public Convenience and Necessity, the Trustees are authorized to abandon said portions of branch line.

Enter:

James H. Wilkerson,
District Judge.

Dated July 28, 1939.

422 And afterwards, to wit, on the 28th day of July, A. D. 1939, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Entered July 28, 1939.

423 Order No. 530.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER AUTHORIZING TRUSTEES TO ENTER INTO CONDITIONAL SALES CONTRACT FOR THE PURCHASE OF ONE DIESEL SWITCHING LOCOMOTIVE.

This day coming on to be heard the verified petition of the Trustees for authority to acquire under a conditional sales contract from Electro-Motive Corporation one (1) 100-ton, 600 horsepower Diesel switching locomotive at a cost of $62,598, f. o. b. station of the Trust Estate at Sioux City, Iowa, payable in ninety-six (96) equal monthly installments of $734.25 each, including interest at three per cent (3%) per annum, and it appearing from said petition that the purchase of the one Diesel switching locomotive is for the purpose of improving switching service at Sioux City, Iowa and effecting economies on the railroad there, and that the Trustees deem it to be in the interest of the Trust Estate, its creditors and stockholders that the said switching locomotive be acquired, and it also appearing that due notice and a copy of said petition, to which was attached the form of a conditional sales contract with the Electro-Motive Corporation as Exhibit "A" have been served on each party to this proceeding entitled to notice, and the Court having considered the petition, heard the statements of Counsel and being fully advised in the premises, it is

Ordered, that Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, be, and they are hereby, authorized to acquire under a conditional sales contract from the Electro-Motive Corporation one (1) 100-ton, 600 horsepower Diesel switch-

ing locomotive at a cost of $62,598, f. o. b. station of the Trust Estate at Sioux City, Iowa, payable in ninety-six (96) equal monthly instalments of $734.25 each, including interest at three per cent (3%) per annum, said conditional sales contract with the Electro-Motive Corporation to be substantially in manner and form as set forth in the copy of the conditional sales contract attached to and made a part of the said petition and marked Exhibit "A", all of said monthly payments to be made from funds in hand derived from operation of the property of the Trust Estate; and

It is further ordered, that the trusteeship of the Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, shall not be terminated nor shall the trusteeship estate thereunder be surrendered by the Trustees or their successor, or successors, unless as a condition to the termination of the
424 trusteeship of Debtor herein, whether pursuant to a plan of reorganization or otherwise, all the obligations then existing or to accrue of the Trustees herein under said conditional sales contract shall be assumed as a general obligation by Debtor herein, or by any other corporation or any receiver or receivers, in equity that shall succeed to the Trustees herein in the possession of not less than 75% of the owned lines of railroad comprising the Trust Estate. In case of any sale or conveyance of not less than 75% of all of said owned lines of railroad, the purchaser, or transferee of the purchaser, shall not be at liberty to refuse to accept said conditional sales contract or to disaffirm the same (but if acquiring not less than 75% of all of said owned lines of railroad for the purpose of transferring them to a corporation formed for the purpose of reorganization, any such purchaser shall not incur any personal liability under or in respect of said conditional sales contract, provided such transferee corporation shall assume, as a general obligation, all the obligations of the Trustees herein under said conditional sales contract). In case any corporation, or any receiver or receivers in equity, shall so succeed the Trustees herein in the possession of not less than 75% of all of said owned lines of railroad, and shall assume, as a general obligation, all the obligations of the Trustees herein then existing and to accrue under said conditional sales contract, the Trustees herein shall thereupon be relieved from any further

liability under or in respect of said conditional sales contract. In the event that upon the confirmation of a plan of reorganization, or upon the dismissal or termination of this proceeding, neither the Debtor nor any other corporation, or receiver or receivers in equity, shall alone succeed to the possession of 75% of all of said owned lines of railroad, then all of the unpaid instalments of the purchase price under said conditional sales contract, together with accrued interest thereon, and all of the other obligations and liabilities of the Trustees herein under said conditional sales contract shall become immediately due and payable on the date of such confirmation, dismissal or termination, and the Court will make such provision for the payment thereof as will be equitable.

Enter:

James H. Wilkerson,
District Judge.

Dated July 28, 1939.

341 And on, to wit, the 20th day of December, A. D. 1940, and filed in the Clerk's office of said Court a certain REPORT OF PROCEEDINGS had December 12th, 1939, before Judge Igoe, and Testimony in words and figures following, to wit:

342 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

Report of Proceedings upon the hearing of petition of the trustees for authority to pay interest on the general mortgage bonds in the hands of the public before the Honorable Michael L. Igoe, Judge of said Court, on the 12th day of December, 1939.

Appearances:

Mr. A. M. Whitlock, on Behalf of the Trustees;

Messrs. Tenney, Harding, Sherman & Rogers, By Mr. H. F. Tenney, on behalf of Guaranty Trust Co., Mortgage Trustee, of 50-year Mortgage;

Messrs. Sidley, McPherson, Austin & Burgess, By Mr. Douglas F. Smith, on behalf of the Life Insurance Group;

Messrs. Winston, Strawn & Shaw, By Mr. A. L. Michel, on behalf of City Bank, Farmers Trust Co., Trustee under Milwaukee & Northern 1st and Consolidated Mortgages.

343 Mr. Whitlock: If the Court please, this is the fifth petition of this kind to make a partial payment of the interest.

The Court: Is there any objection to it?

Mr. Whitlock: On the general mortgage bonds. No, there is no objection, if the Court please. I think you may wish to hear a little testimony on the thing, and I can, in about ten minutes, present what I think is adequate on the subject.

The Court: All right.

Mr. Whitlock: Mr. Severs, will you be sworn, please.

J. W. SEVERS, called as a witness on behalf of the Petitioners herein, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Whitlock:

Q. Will you state your name?

A. J. W. Severs.

Q. What position do you occupy with the debtor in this proceeding?

A. Assistant comptroller and assistant to the trustee.

Q. The Trustee that you refer to, I suppose is the trustee of the Chicago, Milwaukee, St. Paul and Pa-
344 cific Railroad?

A. That is right.

Q. How long have you served in the capacity that you now serve in?

A. I have been assistant comptroller since November, 1927, and I was appointed assistant to the trustee on December 4th of this year.

Q. So your service covers much more time than the period of the trusteeship?

A. Yes, very much more.

Q. Do you have access to and supervision of the records of the Milwaukee Road relative to earnings?

A. I do.

Q. When I use the term "Milwaukee Road", I refer to the Chicago, Milwaukee, St. Paul and Pacific Railroad, now in trusteeship in this proceedings.

A. I understand that.

Q. Are you personally familiar with those records?

A. I am.

Q. Have you examined them for the purpose of determining the income available for interest on mortgage bonds for the period from July 1, 1935 to the present time?

A. Yes, I have.

Q. And I will ask you if you have prepared an ex-
345 hibit showing the result of your study and examination of those records?

A. I have prepared an exhibit.

Mr. Whitlock: Will you produce it, please?

(Witness hands document to Mr. Whitlock.)

Mr. Whitlock: Q. Do you have copies for the other gentlemen here?

A. Yes, I have.

Mr. Whitlock: May that be given an exhibit number?

The Court: Yes, Exhibit No. 1.

Mr. Whitlock: Exhibit No. 1.

(The Document so offered and received in evidence was thereupon marked EXHIBIT 1, being, in the words and figures following, to-wit:)

346 Mr. Whitlock: If the Court please, your Honor might be interested in seeing it. (Handing exhibit to the Court.

Mr. Whitlock:

Q. Mr. Severs, from the records of the railroad available to you and which you say you have examined, have you been able to determine the earnings for the period about which I asked you by the lines upon which the general mortgage is a first lien?

A. I have, yes, sir.

Q. Then will you state the result of your study, giving the amount available for the payment of bond interest?

A. I have made a study of the earnings available from operations of the general mortgage lines for the period July 1, 1935 to December 31, 1938. I have also studied the trend of traffic on the respective lines, subject to the first lien mortgages and I am satisfied that there has been nothing to disturb the showing for the period ended December 31, 1938. In other words, I mean that that is representative.

Q. Then give us briefly the showing, giving the figures.

A. For the period July 1, 1935 to December 31, 1938,

347 the income available for fixed charges as prescribed by the Interstate Commerce Commission for the General mortgage lines amounted to $26,817,802. After deducting miscellaneous interest, such as on unfunded items like deferred taxes, overcharge claims, and special assessments and interest that has been authorized by the Court on Reconstruction Finance Corporation loans, interest on Railroad Credit Corporation loans and on equipment obligations and rent for lease of road, I have determined that the interest available for interest on general mortgage bonds amounted to $20,893,663.

During this period there was authorized for payment interest on general mortgage bonds of $5,952,255 leaving a

remainder of income available for interest on mortgage bonds $14,941,408. Deducting from that figure the net of capital expenditures and payments in reduction of funded debt, there is a remainder of income available for interest on general mortgage bonds of $11,863,549.

Q. In the course of these proceedings, Mr. Severs, reference has been made from time to time to certain pieces of line which have been designated in the record here on previous hearings as pieces of lines east. What lines do those pieces of lines east aggregate?

A. Well, approximately 575 miles.

348 Q. In making your study of the earnings available have you included in the earnings of general mortgage lines the earnings on any or all of these pieces of lines?

A. I have not. The earnings of those lines have been assigned to the first and refunding mortgage.

Q. You furnished me the facts and figures set forth in the petition for this order, did you not?

A. I did.

Q. I notice in paragraph 1 of that petition is set forth the mileage on which the general mortgage is a first lien. Certain mileage is given. Is the mileage of the so-called pieces of lines east included in that description?

A. They are not.

Q. They are excluded?

A. They are excluded.

Q. Could you, rather briefly, just give us the names of those pieces of lines that are excluded, if it will take you a minute or two, but I would like to have it in the record. By names, I mean you can designate them by termini.

A. All right. Muscatine to Rutledge, Iowa, 76.30

349 miles;

Ashdale to Ebner, Illinois, 15.10 miles;

Libertyville to Janesville, 64.18 miles;

Stewart Junction to Seatonville Junction and Cherry, Illinois, 39.58 miles;

Fonda to Spencer, Iowa, 43.57 miles;

Rockwell City to Storm Lake, Iowa, 38.73 miles;

Kelso Junction to Crystall Falls and Iron River, Michigan, 27.26 miles;

Nekoosa Junction to Nekoosa, Wisconsin, 2.91 miles;

Merrill to New Wood, Wisconsin, 14.89 miles;

Otis to Gleason and Doering, Wisconsin, 16.79 miles;

Farmington to Benning, Minnesota, 56.23 miles;

Fairbault to Zumbrota, Minnesota, 34.39 miles;
Hayward to Hollandale, Minnesota, 6.94 miles;
Napa to Platte, South Dakota, 82.03 miles;
Woonsocket to Wossington Springs, South Dakota, 15.14 miles;
Bowdle to Mobridge, South Dakota, 39.86 miles; and
350 Java Junction to Java, South Dakota, 1.04 miles;
Total of 574.94 miles.

Q. Mr. Severs, will you state the cash on hand in the trust estate at the present time?

A. Well, as of last night, there was $10,850,000 after deducting five hundred and thirty-three thousand of cash reserved to take care of interest and principal payments authorized but not yet claimed for payment.

Q. That is dollars, you mean?

A. That is dollars.

Q. Mr. Severs, from your study and your knowledge of this particular railroad, its financial affairs, your experience over the years, as an accountant and as a financial man, what would you say as to whether or not the earnings from the general mortgage lines are sufficient to justify the payment of the amount requested to be paid?

A. I am definitely sure they are sufficient.

Q. Tell the Court now the amount of interest that is proposed to be paid and to what dates it will complete payment on the outstanding general mortgage bonds.

A. The amount of interest proposed to be paid amounts to $1,891,894.58, and that represents the remainder of
351 the maturities, July 1, 1935, October 1, 1935, and the January 1, 1936. In other words, that pays general mortgage interest up to and including the maturity of January 1, 1936.

Q. Some of the bonds outstanding, I understand are coupon bonds and others are registered bonds?

A. That is so.

Q. Is it also true that certain of the bonds carry a proviso requiring the payment of interest tax up to two per cent and some do not?

A. That is so.

Q. Do you recall the series on which we are required to pay the two per cent?

A. Series A, B and C include tax free covenants and on the other series, Series E and F they do not have tax free covenants. When they were sold the bondholders waived the tax free covenant.

Q. How many payments since the trusteeship of this railroad have heretofore been made on the interest on these general mortgage bonds?

A. Four.

Q. Prior to this one?

A. Prior to this one.

Q. This would make five?

A. That is so.

352 Q. In paragraphs 3 and 4 of the petition and also in paragraph 1 of the petition, you set forth certain descriptions of lines and certain facts and figures, or rather the petition sets forth those facts and figures. You stated, I believe, that those facts and figures were furnished by you?

A. That is so.

Q. To me?

A. That is so.

Q. For inclusion in this petition. And what have you to say as to the correctness of those facts and figures as therein stated?

A. They are correct.

Q. As to the exhibit introduced in evidence, designated Exhibit 1, what have you to say as to the correctness, or otherwise, of the facts and figures set forth on that exhibit?

A. Well, from the beginning of the proceedings, July 1, 1935, to the end of September, 1939, they represent actual figures.

Q. Are they accurate?

A. They are accurate.

Q. And from September, 1939, on?

A. And from October to December, 1939, inclusive, they are estimates. But I feel that they are relatively close
353 to the actual results, as soon as they will be obtained.

Q. Then would you say, Mr. Severs, that the trustees of this property have on hand adequate and sufficient funds with which to make the payment?

A. I am sure of that.

Q. Requested in this petition?

A. I am sure of that.

Q. You are sure of that. And it is your opinion, as a financial man, that the payments are justified?

A. Yes, sir.

Mr. Whitlock: That is all.

Cross-Examination by Mr. Smith.

Q. Mr. Severs, you have said that in determining the amount which you believed to be clearly available for payment of interest on general mortgage bonds, you did not include any income accruing from the so-called seventeen pieces of lines east, is that correct?

A. That is correct.

Q. And in failing to include any of that revenue, were you attempting at all to resolve or determine the
354 dispute which exists with reference to the priority of liens on those lines?

A. I was not.

Q. Was it simply to make it entirely clear that the amount available for interest on general mortgage bonds was relieved of any doubt on that score that you failed to put into that income any return from these lines?

A. That was one of the reasons. The other reason was that we had previously followed the practice of allocating the earnings of these so-called pieces of lines east to another first lien mortgage.

Mr. Smith: Thank you.

Mr. Michel: May I ask?

Mr. Whitlock: Yes.

Cross-Examination by Mr. Michel.

Q. Mr. Severs, are you familiar with the portions of lines covered by the lien of the Milwaukee and Northern mortgages?

A. I am; yes, sir.

Q. In your consideration of the net earnings available for payment of interest on the general mortgage bonds from the portion of the system which is subject to the lien of the first mortgage bonds, did you consider any of
355 the net earnings which accrued to the system from the Milwaukee and Northern lines?

A. No sir.

Q. Did you include any portion of the net earnings to the system which accrued from traffic interchanged with the Milwaukee and Northern lines?

A. Yes, sir.

Mr. Michel: That is all.

The Court: Is that all?

Mr. Whitlock: That is all. I will state to your Honor and this may be for the record, that counsel representing certain of the parties here have asked me to include in the order a reservation of jurisdiction of this Court to determine rights and equities of any party hereto which may result from, or might result from the payments hereby authorized, and I have included such a reservation, in what appears to me to be appropriate language.

Mr. Tenney: I am appearing on behalf of the Guaranty Trust Company, mortgage trustee of the 50-Year mortgage and it is our understanding that the reservations which counsel referred to are effective for the purpose of reserving for future consideration any question about a dis-
356 pute of the lien or any question as to the allocation of income from different parts of the system. I think we are all agreed on the meaning of the order.

The Court: As I understand—

Mr. Whitlock: I would say it would give the Court the right to make any adjustment which might arise from any—

The Court: You are not objecting to the payment of these interest funds?

Mr. Tenney: No.

The Court: But you want to keep alive every right that you have up to date?

Mr. Tenney: Yes, that is the substance of it.

The Court: What about this exhibit? Do you want it attached to this order or not?

Mr. Whitlock: I think the exhibit should be left with the clerk. I think the clerk should have the exhibit, your Honor.

(Which were all of the proceedings had upon the hearing of the above entitled petition.)

357 Title

Testimony of J. W. SEVERS on hearing of petition of the Trustees for authority to pay interest on General Mortgage Bonds, before Judge Igoe on December 12, 1939.

Direct Examination by Mr. Whitlock.

My name is J. W. Severs.

I am Assistant Comptroller and Assistant to the Trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad.

I have been Assistant Comptroller since November, 1927, and I was appointed Assistant to the Trustee on December 4th of this year.

My service covers much more time than the period of the Trusteeship.

I have access to and supervision of the records of the Milwaukee Road relative to earnings.

I am personally familiar with those records.

I have examined them for the purpose of determining the income available for interest on mortgage bonds for the period from July 1, 1935 to the present time.

I have prepared an exhibit showing the result of my study and examination of those records.

(The document received in evidence as EXHIBIT 1, being in the words and figures following):

358 EXHIBIT NO. 1.

Chicago, Illinois, Nov. 21, 1939.

Statement of Income Available for Interest on Mortgage Bonds for the Period 7/1/35 to 12/31/39 (Octo. to Dec. 1939 incl. Est.).

Interest Matured on First Lien Mortgage Bonds Outstanding (Excluding bonds owned by Milwaukee)	$28,915,920.
(A) Income available for Fixed Charges (As prescribed by I. C. C. effective 6/1/35)	40,764,903.
Deduct interest other than Mortgage bond interest and rents, authorized by Court for payment, and Amortization of Discount on Funded Debt	

(1) Interest on Government Loans:	
Reconstruction Finance Corporation	2,073,052.
P. W. A.—Assigned to R. F. C.	342,780.
(2) Interest on Railroad Credit Corporation Loans	71,153.
(3) Interest on Equipment Obligations	5,760,417.
(4) Interest on Continental Illinois Nat'l. Bank and Trust Co. of Chicago, Note dated March 1, 1939	17,110.
(5) Interest on State of Washington deferred taxes, on overcharge claims, special assessments, cost of air-conditioning Pullman equipment, additional taxes, etc.	448,000.
(6) Rent for Leased Roads:	
(a) Rental for Terre Haute (Interest on Terre Haute bonds outstanding including $1,515,000 bonds owned by Milwaukee and Terre Haute Corporate Expenses)	4,994,357.
(b) Rent for C. B. & Q. Tracks at Council Bluffs Iowa	1,890.
(7) Amortization of Discount on Funded Debt	127,296.
Total Deductions	13,836,055.
(B) Income Available for Interest on Mortgage Bonds	26,928,848.
(C) Mortgage Bond Interest Paid (All amounts which matured in period and were authorized by Court for payment):	
(1) Milwaukee and Northern Bonds	951,660.
(2) General Mortgage Bonds	5,952,255.
	6,903,915.

(D)	Remainder of Income Available for Interest on Mortgage Bonds		20,024,933.
(E)	Capital Expenditures and Payments in Reduction of Funded Debt:		
	(1) Additions and Betterments		23,922,735.
	(2) Initial Payments on new Equipment		5,690,273.
	(3) Principal payments on Equipment obligations (All amounts which matured in period and were authorized by Court for payment)		13,249,563.
	(4) Principal Payments on Continental Illinois National Bank and Trust Co. of Chicago, Note dated March 1, 1939		444,000.
	(5) Payment account P. W. A. Loan, assigned to R. F. C. (First three serial notes which matured Jan. 1, 1937-1938 and 1939—$870,000	$870,000	
	Offset by material purchased out of proceeds of P. W. A. Loan already deducted through charges to Additions and Betterments and Operating Expenses in the period Cr.	840,137	29,863.
	Total Capital Expenditures and Payments in reduction of Funded Debt		43,336,434.
359 (F)	Credits to (E):		
	(1) Depreciation Charges in Operating Expenses		25,005,278.
	(2) Road Retirement Charges in Operating Expenses		6,349,802.
	(3) Salvage from Property Retired		4,018,526.
	Total Credits to (E)		35,373,606.
(G)	Net of Capital Expenditures and Payments in Reduction of Funded Debt		7,962,828.

(H) Remainder of Income Available for Interest on Mortgage Bonds After Deduction of Bond Interest Paid and Net of Capital Expenditures and payments in Reduction of Funded Debt	12,062,105.
Deduct Dividends and Interest included in Income from securities pledged with Trustee of the First and Refunding Mortgage and withheld from Railroad Trustees	1,192,343.
(I) Remainder of Income Available for Interest on Mortgage Bonds After Deduction of Bond Interest Paid, Net Capital Expenditures, Payments in Reduction of Funded Debt and Dividends and Interest on Pledged Securities withheld from Railroad Trustees	10,869,762.

360 From the records of the Railroad available to me and which I have examined, I have been able to determine the earnings for the period about which you asked me by the lines upon which the General Mortgage is a first lien.

I have made a study of the earnings available from operations of the General Mortgage lines for the period July 1, 1935 to December 31, 1938. I have also studied the trend of traffic on the respective lines, subject to the first lien mortgages and I am satisfied that there has been nothing to disturb the showing for the period ended December 31, 1938. In other words, I mean that that is representative.

For the period July 1, 1935 to December 31, 1938, the income available for fixed charges as prescribed by the Interstate Commerce Commission for the General Mortgage lines amounted to $26,817,802. After deducting miscellaneous interest, such as on unfunded items like deferred taxes, overcharge claims, and special assessments and interest that has been authorized by the Court on Reconstruction Finance Corporation loans, interest on Railroad Credit Corporation loans and on equipment obligations and rent for lease of road, I have determined that the interest available for interest on General Mortgage Bonds amounted to $20,893,663.

During this period there was authorized for payment

interest on General Mortgage bonds of $5,952,255, leaving a remainder of income available for interest on mortgage bonds $14,941,408. Deducting from that figure the net of capital expenditures and payments in reduction of funded debt, there is a remainder of income available for interest on General Mortgage Bonds of $11,863,549.

Certain pieces of line which have been designated in the record here on previous hearings as pieces of lines east aggregate approximately 575 miles.

361 In making my study of the earnings available I have not included in the earnings of General Mortgage lines the earnings on any or all of these pieces of lines. The earnings of those lines have been assigned to the First and Refunding Mortgage.

I furnished the facts and figures set forth in the petition for this order.

In paragraph 1 of that petition is set forth the mileage on which the General Mortgage is a first lien. Certain mileage is given. The mileage of the so-called pieces of lines east is not included in that description. They are excluded.

The names of those pieces of lines that are excluded I can designate by termini:

Muscatine to Rutledge, Iowa, 76.30 miles;

Ashdale to Ebner, Illinois, 15.10 miles;

Libertyville to Janesville, 64.18 miles;

Stewart Junction to Seatonville Junction and Cherry, Illinois, 39.58 miles;

Fonda to Spencer, Iowa, 43.57 miles;

Rockwell City to Storm Lake, Iowa, 38.73 miles;

Kelso Junction to Crystall Falls and Iron River, Michigan, 27.26 miles;

Nekoosa Junction to Nekoosa, Wisconsin, 2.91 miles;

Merrill to New Wood, Wisconsin, 14.89 miles;

Otis to Gleason and Doering, Wisconsin, 16.79 miles;

Farmington to Benning, Minnesota, 56.23 miles;

Fairbault to Zumbrota, Minnesota, 34.39 miles;

Hayward to Hollandale, Minnesota, 6.94 miles;

Napa to Platte, South Dakota, 82.03 miles;

Woonsocket to Wossington Springs, South Dakota, 15.14 miles;

Bowdle to Mobridge, South Dakota, 39.86 miles; and

Java Junction to Java, South Dakota, 1.04 miles;

Total of 574.94 miles.

362 The cash on hand in the trust estate as of last night, was $10,850,000, after deducting five hundred and thirty-three thousand dollars of cash reserved to take care of interest and principal payments authorized but not yet claimed for payment.

From my study and my knowledge of this particular Railroad, its financial affairs, my experience over the years, as an accountant and as a financial man, I am definitely sure that the earnings from the General Mortgage lines are sufficient to justify the payment of the amount requested to be paid.

The amount of interest proposed to be paid amounts to $1,891,894.58, and that represents the remainder of the maturities, July 1, 1935, October 1, 1935, and the January 1, 1936. In other words, that pays general mortgage interest up to and including the maturity of January 1, 1936.

As to the exhibit introduced in evidence, designated Exhibit "1," the facts and figures set forth on that Exhibit from the beginning of the proceedings, July 1, 1935, to the end of September, 1939, represent actual figures and they are accurate.

From October to December, 1939, inclusive, they are estimates. But I feel that they are relatively close to the actual results, as soon as they will be obtained.

Cross-Examination by Mr. Smith.

I have said that in determining the amount which I believed to be clearly available for payment of interest on General Mortgage Bonds, I did not include any income accruing from the so-called Seventeen Pieces of Lines East.

In failing to include any of that revenue, I was not attempting at all to resolve or determine the dispute which exists with reference to the priority of liens on
363 those lines.

One of the reasons why I failed to put into that income any return from these lines was to make it entirely clear that the amount available for interest on General Mortgage Bonds was relieved of any doubt on that score. The other reason was that we had previously followed the practice of allocating the earnings of these so-called Pieces of Lines East to another First Lien Mortgage.

Entered Jan. 19, 1940.

470 And afterwards, to wit, on the 19th day of January, A. D. 1940, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit:

471 Order No. 618.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER EXTENDING TIME WITHIN WHICH TO ELECT WHETHER TO ADOPT OR DISAFFIRM CONTRACTS TO AND INCLUDING JULY 31, 1940.

This day coming on to be heard the oral motion of Counsel for Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, for an order extending the time within which to elect whether to adopt or disaffirm leases, agreements or contracts, and it being represented that the Trustees have not as yet fully completed the examination of the leases, the agreements and contracts to which the Debtor is a party, or under which it may be obligated, in order to determine whether to elect to adopt or disaffirm same within the time fixed by the order of this Court entered herein on July 20, 1939, and it appearing that due Notice of said Motion has been served on each party to this proceeding entitled to notice, and the Court having considered the motion, heard the statements of Counsel and being fully advised in the premises, it is

Ordered, that the time fixed by order entered herein July 20, 1939, within which the Trustees may elect whether to adopt or continue in force, or to refuse to adopt or continue in force, or to disaffirm or reject, any lease, trackage, terminal, crossing or operating agreement, or other contract not fully performed, to which the Debtor is a party, or under which it may be obligated, shall be extended to and including July 31, 1940.

Except as hereby modified, Paragraph (4) of the order entered herein June 29, 1935, shall remain in full force and effect.

The Court reserves full right at any time, upon such further orders in the premises as the Court may deem proper, to amend, modify, or otherwise change or rescind the present order.

Enter:

Holly,
District Judge.

Dated January 19, 1940.

[Notice of motion omitted in printing.]

487 And on, to wit, the 1st day of March, A. D. 1940 came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Petition for Approval of Improvement Budget for the Year 1940 in words and figures following, to wit: Filed Mar. 1, 1940.

488 Petition for Order No. .....

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

PETITION OF TRUSTEES FOR APPROVAL OF IMPROVEMENT BUDGET FOR THE YEAR 1940.

The petition of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, respectfully represents:

1. Your Petitioners submit herewith for approval of the Court Improvement Budget Items and Costs for the year 1940.

2. Attached hereto and made a part hereof as Exhibit "A" is a description of the Budge items and costs.

3. Petitioners have confined their recommendations for Capital Expenditures in the year 1940 to what is considered to be the necessary requirements consistent with proper maintenance of the property. The acquisition of 2000 freight cars and 10 high-speed freight locomotives, referred to in Exhibit "A", was authorized by the Court in its order of December 5, 1939, (printed record, p. 5951). This equipment is to be financed by the sale of $5,080,000, principal amount, of Equipment Trust Certificates, Series "U",

and an initial payment by the Trust Estate in the amount of $1,270,000. The acquisition of 105 freight cars, re-
489 ferred to in Exhibit "A", was financed by the sale of Equipment Trust Certificates, Series "T", authorized by the Court in its order of May 3, 1939, (printed record, p. 4995) and represents the equipment undelivered at the end of 1939. The cost of this equipment, together with one 200 ton wrecking derrick included in the 1939 Budget, is estimated at $309,489, of which $152,377 will be advanced by the Trust Estate. The freight cars will be constructed in the Milwaukee Shops of the Trust Estate and will be constructed as satisfactorily as, and at a substantially lower out-of-pocket cost than, if purchased from outside car builders. This construction work will be performed without interfering with shop repair work.

4. Petitioners further state that the proposed Budget expenditures for the year 1940, exclusive of expenditures for said new equipment necessary to meet the transportation requirements of the System, are for necessary rail, ballast and bridge programs, the cost of improvements to existing equipment, the cost of certain ordinary improvements, contributions to the reconstruction of existing viaducts, purchase of certain additional property and other similar items, the description and cost of which appear in Exhibit "A".

5. In addition to the items included in the proposed Budget, a further expenditure will be required at Kansas City, Missouri, to make certain improvements, including the construction of a new bridge over the Missouri River. Alternate plans affecting this project are under consideration. The expenditure required in 1940 is estimated at $1,251,000 under one of these plans and under the other it is estimated at $1,000,000. The specific amount required for said purpose cannot be determined until a definite plan is adopted and this item will, therefore, be the subject of a separate petition to be filed later.

490 6. Petitioners are of the opinion that the proposed expenditures for which authorization of the Court is here sought, should be made and that the proposed improvements, substantially as herein set forth, subject only to such slight changes as may be found economical, would be in the interest of the Trust Estate and creditors and stockholders concerned.

Wherefore, Petitioners pray that an order be entered authorizing expenditures chargeable to Investment Ac-

count in the aggregate sum of $8,012,923 (which includes $1,422,377 for initial payments on new equipment previously authorized) for the aforesaid improvements and authorizing such improvements to be made during the year 1940 to the railroad property of the Trust Estate as herein and in said Exhibit "A" set forth, subject only to such slight changes as may be found economical and which will not increase the total cost and will be of benefit to the Trust Estate.

Henry A. Scandrett,
Walter J. Cummings,
George I. Haight,
Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company.
By Henry A. Scandrett,
One of said Trustees.

A. N. Whitlock,
C. S. Jefferson,
Attorneys for Trustees.

491 United States of America,
Northern District of Illinois,
Eastern Division. } ss.

A. N. Whitlock, being duly sworn, upon his oath deposes and says that he is Counsel for Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Petitioners in the foregoing petition; that he has read the foregoing petition and knows the contents thereof and that the facts alleged therein are true as he verily believes.

A. N. Whitlock.

Subscribed and Sworn to before me this 21st day of February, 1940.

J. M. Jarmotz,
(Seal) *Notary Public, Cook County, Illinois.*

My Commission expires July 21, 1943.

Filed ..... Clerk.

EXHIBIT "A"

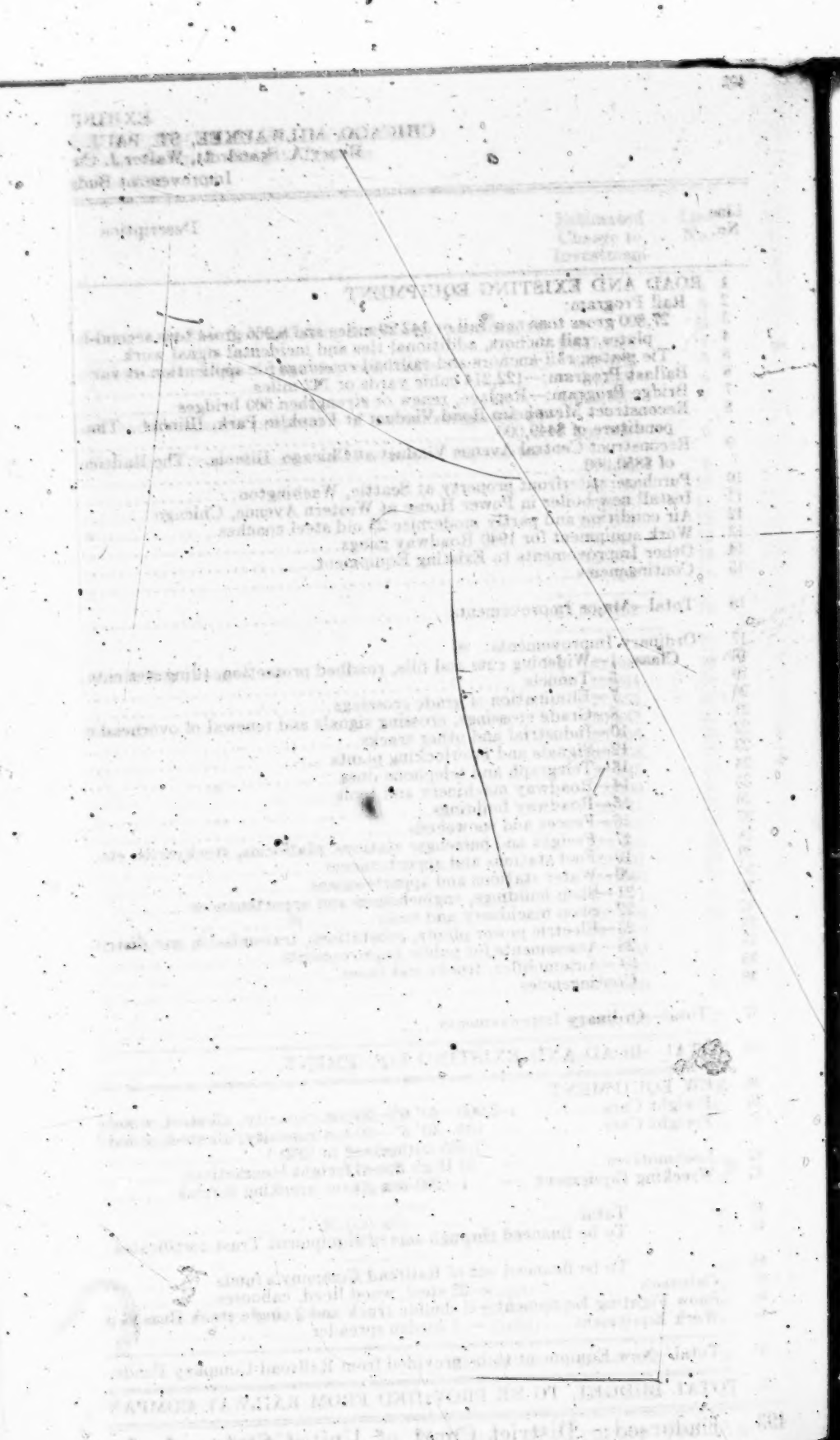
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees

Improvement Budget For 1940

Line No.	Description			Estimated Charge to Investment	Line No.
1	ROAD AND EXISTING EQUIPMENT				1
2	Rail Program:				2
3	27,800 gross tons new rail or 142.29 miles and 8,966 gross tons second-hand rail or 54.22 miles, including fastenings, turnouts, tie plates, rail anchors, additional ties and incidental signal work			$ 847,654.	3 4
5	Tie plates, rail anchors and railroad crossings for application at various locations outside of the relay rail limits			659,572.	5
6	Ballast Program:—122,214 cubic yards or 142 miles			81,558.	6
7	Bridge Program:—Replace, renew or strengthen 660 bridges			1,209,903.	7
8	Reconstruct Mannheim Road Viaduct at Franklin Park, Illinois. The Railroad Company's proportion of a total estimated expenditure of $449,000			100,000.	8
9	Reconstruct Central Avenue Viaduct at Chicago, Illinois. The Railroad Company's proportion of a total estimated expenditure of $850,000			97,000.	9
10	Purchase waterfront property at Seattle, Washington			48,150.	10
11	Install new boiler in Power House at Western Avenue, Chicago			92,643.	11
12	Air condition and partly modernize 25 old steel coaches			257,500.	12
13	Work equipment for 1940 Roadway gangs			60,000.	13
14	Other Improvements to Existing Equipment			302,378.	14
15	Contingencies			50,000.	15
16	Total—Major Improvements			$3,806,358.	16
17	Ordinary Improvements:				17
18	Class 1—Widening cuts and fills, roadbed protection, tiling wet cuts, minor line changes, etc			$ 183,696.	18
19	5—Tunnels			39,264.	19
20	7—Elimination of grade crossings			21,755.	20
21	8—Grade crossings, crossing signals and renewal of overhead crossings			150,947.	21
22	10—Industrial and other tracks			95,366.	22
23	12—Signals and interlocking plants			130,903.	23
24	13—Telegraph and telephone lines			26,845.	24
25	14—Roadway machinery and tools			113,399.	25
26	15—Roadway buildings			10,751.	26
27	16—Fences and snowsheds			8,898.	27
28	17—Freight and passenger stations, platforms, stockyards, etc			224,436.	28
29	19—Fuel stations and appurtenances			30,801.	29
30	20—Water stations and appurtenances			101,046.	30
31	21—Shop buildings, enginehouses and appurtenances			431,571.	31
32	22—Shop machinery and tools			298,269.	32
33	23—Electric power plants, substations, transmission and distribution lines			97,370.	33
34	28—Assessments for public improvements			30,000.	34
35	34—Automobiles, trucks and buses			23,192.	35
36	Contingencies			650,000.	36
37	Total—Ordinary Improvements			$2,661,509.	37
38	TOTAL—ROAD AND EXISTING EQUIPMENT			$6,467,867.	38
39	NEW EQUIPMENT				39
40	Freight Cars	—2,000—40′ 6″—50-ton capacity, all steel, wood lined, box cars	$4,875,600.		40
41	Freight Cars	— 105—40′ 6″—50-ton capacity, all steel, wood lined, box cars (Balance of 1,105 authorized in 1939.)	234,089.		41
42	Locomotives	— 10 High Speed freight locomotives	1,475,000.		42
43	Wrecking Equipment	— 1—200-ton steam wrecking derrick	75,400.		43
44	Total		$6,659,489.		44
45	To be financed through sale of Equipment Trust certificates		5,237,112.	$1,422,377.	45
46	To be financed out of Railroad Company's funds		$1,422,377.		46
47	Cabooses	—25 steel, wood lined, cabooses		80,000.	47
48	Snow Fighting Equipment	—1 double track and 2 single track Russell plows and 1 wedge type plow		35,048.	48
49	Work Equipment	— 1 Jordan spreader		7,631.	49
50	Total—New Equipment to be provided from Railroad Company Funds			$1,545,056.	$1,545,056. 50
51	TOTAL BUDGET, TO BE PROVIDED FROM RAILWAY COMPANY FUNDS				$8,012,923. 51

 Endorsed: District Court of United States * * (Caption 60463) * * Petition of Trustee for Approval of Improvement Budget for the Year 1940 Filed May 1, 1940 Hugh Clark



494 And afterwards, to wit, on the 1st day of March, A. D. 1940, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit: Entered Mar. 1, 1940.

495 Order No. 633.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

ORDER APPROVING IMPROVEMENT BUDGET FOR THE YEAR 1940.

This day coming on to be heard the verified petition of the Trustees for an Order approving the proposed Improvement Budget of the property of the Trust Estate for the year 1940, prepared under the direction of the Trustees thereof, and it appearing that a copy of said petition, to which was attached as an exhibit and marked Exhibit "A" a description of the proposed Budget items and costs, and due notice of presentation thereof and hearing thereon have been served on each party to this proceeding entitled to notice, and that a copy of said Exhibit has been filed herein, and the Court having considered the petition, heard the statements of Counsel, and being fully advised in the premises, it is

Ordered, that the proposed expenditures in the aggregate sum of $8,012,923 chargeable to Investment account, as specified in said Exhibit "A" on file herein, are approved and the Trustees are authorized to make such improvements during the year 1940 to the railroad property of the Trust Estate as are in said petition and in said Exhibit "A" set forth, subject only to such slight changes as may be found economical and which will not increase the total cost and will be of benefit to the Trust Estate.

Enter:

Igoe,
District Judge.

Dated March 1, 1940.

Entered Mar. 15, 1940.

496 And afterwards, to wit, on the 15th day of March, A. D. 1940, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

497 Order No. 637.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * *(Caption—60463) * *

ORDER AUTHORIZING TRUSTEES TO ENTER INTO CONDITIONAL SALE AGREEMENTS FOR THE PURCHASE OF 18 DIESEL SWITCHING LOCOMOTIVES.

This day coming on to be heard the verified petition of the Trustees for authority to acquire under Conditional Sale Agreements, from Electro-Motive Corporation, twelve (12) 600 horsepower Diesel switching locomotives, at a cost of $61,794.00 each; from American Locomotive Company, two (2) 600 horsepower Diesel switching locomotives, at a cost of $61,618.00 each, and one (1) 1000 horsepower Diesel switching locomotive, at a cost of $82,268.00; from The Baldwin Locomotive Works, one (1) 600 horsepower Diesel switching locomotive, at a cost of $61,500.00; from The Whitcomb Locomotive Company, one (1) 300 horsepower Diesel switching locomotive, at a cost of $27,055.00; and from General Electric Company, one (1) 360 horsepower Diesel switching locomotive, at a cost of $35,572.40, all of said Conditional Sale Agreements providing for delivery at Milwaukee, Wisconsin, and for payment in ninety-six (96) equal monthly installments aggregating $12,322.45 each, including interest at the rate of two and one-half per cent (2½%) per annum; and it appearing from said petition that the purchase of said eighteen (18) Diesel switching locomotives is for the purpose of improving switching service at various stations and operations on certain branch lines of the Trust Estate and effecting economies on the railroad thereof, and that the savings in switching and branch line costs resulting from the use of said eighteen (18) Diesel switching locomotives will be more than sufficient to make the monthly payments hereinabove

specified, and that the Trustees deem it to be in the interest of the Trust Estate, the creditors and stockholders concerned that the said eighteen (18) Diesel switching locomotives be acquired; and it also appearing that due notice and a copy of said petition, to which was attached the proposed form of Conditional Sale Agreement, have been served on each party to this proceeding entitled to notice, and the Court having considered the petition, heard the statements of counsel and being fully advised in the premises, it is

Ordered, that Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, be, and they are hereby, authorized to acquire, under a Conditional Sale Agreement, from Electro-Motive Corporation, twelve (12) 600 horsepower Diesel switching locomotives, at a cost of $61,794.00 each, F. O. B. Milwaukee, Wisconsin, or a total cost of $741,528.00, payable in ninety-six (96) equal monthly installments of $8,530.42 each, including interest at the rate of two and one-half per cent (2½%) per annum; from American Locomotive
498 Company, two (2) 600 horsepower Diesel switching locomotives, at a cost of $61,618.00 each, F. O. B. Milwaukee, Wisconsin, and one (1) 1000 horsepower Diesel switching locomotive, at a cost of $82,268.00, F. O. B. Milwaukee, Wisconsin, or a total cost of $205,504.00, payable in ninety-six (96) equal monthly installments of $2,264.08 each, including interest at the rate of two and one-half per cent (2½%) per annum; from The Baldwin Locomotive Works, one (1) 600 horsepower Diesel switching locomotive, at a cost of $61,500.00, F. O. B. Milwaukee, Wisconsin, payable in ninety-six (96) equal monthly installments of $707.49 each, including interest at the rate of two and one-half per cent (2½%) per annum; from The Whitcomb Locomotive Company, one (1) 300 horsepower Diesel switching locomotive, at a cost of $27,055.00, F. O. B. Milwaukee, Wisconsin, payable in ninety-six (96) equal monthly installments of $311.24 each, including interest at the rate of two and one-half per cent (2½%) per annum; and from General Electric Company, one (1) 360 horsepower Diesel switching locomotive, at a cost of $35,572.40, F. O. B. Milwaukee, Wisconsin, payable in ninety-six (96) equal monthly installments of $409.22 each, including interest at the rate of two and one-half per cent (2½%) per annum; said Conditional Sale Agreements to be substantially in manner and form as

set forth in the copy of Conditional Sale Agreement attached to and made a part of said petition and marked "Exhibit A," all of said monthly payments to be made from funds in hand derived from operation of the property of the Trust Estate; and

It is further ordered, (1) that, except as provided in Subdivision 4 of this paragraph, the trusteeship shall not be terminated, nor shall the Trust Estate thereunder be surrendered by the Trustee, or their successor or successors, unless, as a condition to the termination of the trusteeship of the Debtor herein, whether pursuant to a plan of reorganization or otherwise, all the obligations then existing or to accrue, of the Trustees herein, under said Conditional Sale Agreements, shall be assumed as a general obligation by Debtor herein, or by any other corporation, or any receiver or receivers in equity, that shall succeed to the Trustees herein, in the possession of not less than seventy-five per cent (75%) of the owned lines of railroad comprising the Trust Estate; (2) that in case of any sale or conveyance of not less than seventy-five per cent (75%) of all of said owned lines of railroad, the purchaser, or transferee of the purchaser, shall not be at liberty to refuse to accept said Conditional Sale Agreements or to disaffirm the same (but, if acquiring not less than seventy-five per cent (75%) of all of said owned lines of railroad for the purpose of transferring them to a corporation formed for the purpose of reorganization, any such purchaser shall not incur any personal liability under or in respect of said Conditional Sale Agreements, provided such transferee corporation shall assume, as a general obligation, all the obligations of the Trustees herein under said Conditional Sale Agreements); (3) that in case any corporation, or any receiver or receivers in equity, shall so succeed the Trustees herein in the possession of not less than seventy-five per cent (75%) of all of said owned lines of railroad, and shall assume, as a general obligation, all the obligations of the Trustees herein then existing and to accrue under said Conditional Sale Agreements, the Trustees herein shall thereupon be relieved from any further liability under or in respect of said Conditional Sale Agreements; and (4) that in the event that upon the confirmation of a plan of reorganization, or upon the dismissal or termination of this proceeding, neither the Debtor nor any other corporation, or receiver or receivers in equity, shall alone succeed to the

possession of seventy-five per cent (75%) of all of said owned lines of railroad, then all of the unpaid installments of the purchase price under said Conditional Sales
499 Agreements, together with accrued interest thereon, and all of the other obligations and liabilities of the Trustees herein under said Conditional Sale Agreements, shall become immediately due and payable on the date of such confirmation, dismissal or termination, and the Court will make such provision for the payment thereof as will be equitable. The term "said owned lines of railroad," as used herein, means the owned mileage of the Trust Estate now held by the Railroad Trustees.

It is further ordered, that the obligations of the Trustees in respect of said Conditional Sale Agreements shall be obligations of the Trustees solely as Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and not as individuals, and shalll constitute only the general obligations of the estate of which they are Trustees.

It is further ordered, that the Conditional Sale Agreements, or any other instrument which the Trustees are authorized to execute under the terms of this order, or are required or permitted to execute under the terms of said Conditional Sale Agreements, may be executed for and on their behalf by any one or more of them, or by such officer, agent or employe of the Trustees as they may by resolution, duly adopted, authorize to execute the same.

Enter:

Igoe,

Dated March 15, 1940. *District Judge.*

(The following proceedings before the Interstate Commerce Commission were certified by the said Commission to the District Court under date of June 13, 1940, and filed in said District Court on June 15, 1940.)

3351 INTERSTATE COMMERCE COMMISSION,
Washington.

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Petition of debtor, and accompanying plan, filed June 29, 1935;

Plan of reorganization, filed January 10, 1938;
Modified plan of reorganization, filed January 27, 1938;
Modifications suggested by debtor, filed January 28, 1938;
Notice of hearing dated July 22, 1935, and accompanying announcement;
Order of the Commission, entered June 23, 1936, and accompanying report;
Order of the Commission, entered August 5, 1936, and accompanying report;
Order of the Commission, entered November 14, 1936, and accompanying report;
Order of the Commission, entered April 24, 1937, and accompanying report;
Notice of hearing of the Commission dated May 4, 1937;
Order of the Commission, entered June 15, 1937, and accompanying report;
Letter dated August 12, 1937, to the parties of record, signed Claude R. Porter, Commissioner;
Petition of the debtor, filed September 13, 1937;
Order of the Commission, entered September 15, 1937;
Motion of Group of Institutional Investors, filed September 24, 1937;
3352 Order of the Commission, entered September 24, 1937;
Petition of Guaranty Trust Company of New York, et al., trustees, filed March 7, 1938;
Order of the Commission, entered March 12, 1938;
Petition of Protective Committee for holders of preferred stock, dated March 17, 1938;
Petition of Protective Committee for holders of preferred stock, filed October 26, 1938;
Report proposed by M. S. Jameson, Examiner, filed November 5, 1938;
Answer of Group of Institutional Investors, filed November 7, 1938;
Order of the Commission, entered November 21, 1938;
Report and order of the Commission, filed and entered January 19, 1939;
Notice of oral argument, dated March 4, 1939;
Transcript of the stenographer's notes of the oral argument, held April 12, 1939, at Washington, D. C.;
Petition of the Protective Committee for holders of preferred stock, filed October 2, 1939;

Answer of Mutual Savings Bank Group Committee, filed October 9, 1939;

Reply of the Group of Institutional Investors, filed October 9, 1939;

Order of the Commission, entered October 23, 1939;

Order of the Commission, entered December 20, 1939;

Report and order of the Commission, filed and entered February 12, 1940;

Petition of Israel A. Abrams, et al., filed April 1, 1940;

3353 Petition of United States Trust Company of New York, Trustee, filed April 11, 1940;

Petition of St. Louis Union Trust Company, et al., Trustees, filed April 12, 1940;

Petition of Group of Institutional Investors, filed April 12, 1940;

Petition of Guaranty Trust Company of New York, et al., Trustees, filed April 12, 1940;

Petition of The City Bank of New York, et al., Trustees, filed April 12, 1940;

Petition of Mutual Savings Bank Group, filed April 12, 1940;

Petition of Lemual H. McHenry, et al., filed April 12, 1940;

Exceptions of Protective Committee for holders of preferred stock, filed April 12, 1940;

Brief of The National City Bank of New York, et al., Trustees, filed April 20, 1940;

Reply of Group of Institutional Investors, filed April 22, 1940;

Answer of City Bank Farmers Trust Company, Trustee, filed April 22, 1940;

Reply of Reconstruction Finance Corporation, filed April 22, 1940;

Reply of Mutual Savings Bank Group, filed April 22, 1940;

Petition of Alfred Wolstenholme, et al., filed April 3, 1940;

3354 Report and order of the Commission, filed and entered June 4, 1940, in Finance Docket No. 10882, Chicago, Milwaukee, St. Paul & Pacific Railroad Company Reorganization, the originals of which are now on file and of record in the office of said Commission.

In Witness Whereof I have hereunto set my hand and affixed the Seal of said Commission this 13th day of June, A. D. 1940.

W. P. Bartel,
Secretary of the Interstate Commerce Commission.

(Seal)

4376 INTERSTATE COMMERCE COMMISSION,
Washington.

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Petition of Guaranty Trust Company of New York, et al., trustees, filed August 5, 1935;

Petition of United States Trust Company of New York, filed August 5, 1935;

Petition of Anglo-Continentale Treuhand A. G., filed August 7, 1935;

Petition of Imperial Trust Company, Limited, filed August 7, 1935;

Petition of Israel Abrams, et al., filed August 7, 1935;

Petition of Aetna Life Insurance Company of Hartford, Connecticut, et al., filed August 7, 1935;

Petition of Union Pacific Railroad Company, filed August 7, 1935;

Petition of Thomas E. Noonan, and corrected order of the Commission, entered August 13, 1935;

Petition of James D. Colyer, et al., and order of the Commission, entered November 21, 1935;

Petition of Illinois State Trust Company, et al., Trustees, and order of the Commission, entered February 20, 1936;

Petition of City Bank Farmers Trust Company, as Successor Trustee, and order of the Commission, entered September 25, 1936;

Petition of Alfred Wolstenholme, et al., and order of the Commission, entered October 10, 1936;

Petition of Reconstruction Finance Corporation, and order of the Commission, entered January 5, 1937;

4377 Petition of The Railroad Credit Corporation, and order of the Commission, entered April 2, 1937;

Petition of The National City Bank of New York, et al., filed June 16, 1937;

Petition of Henry Morgenthau, Jr., Director General of Railroads, filed June 16, 1937;

Petition of Chemical Bank & Trust Company, et al., as Trustees, filed September 20, 1937;

Petition of Victor Greiff, and order of the Commission, entered January 11, 1938;

Petition of Protective Committee for Holders of Preferred Stock, filed February 1, 1938;

Petition of William Church Osborn, filed February 1, 1938;

Consent for substitution of Jack E. Bagon, Esq., dated March 26, 1937;

Petition of Mutual Savings Bank Group Committee, filed February 1, 1938;

Petition of Illinois Commerce Commerce Commission, and order of the Commission, entered March 23, 1938;

Petition of Railway Labor Executives' Association, and order of the Commission, entered November 17, 1938;

Petition of The State of Minnesota, et al., and order of the Commission entered April 18, 1938;

Petition of E. Stanley Glines, et al., and order of the Commission, entered December 6, 1938;

Petition of Lemuel H. McHenry, et al., and order of the Commission, entered January 25, 1939,

in Finance Docket No. 10882, Chicago, Milwaukee, St. Paul and Pacific Railroad Company Reorganization, the 4378 originals of which are now on file and of record in the office of said Commission.

In Witness Whereof I have hereunto set my hand and affixed the Seal of said Commission this 10th day of June, A. D. 1940.

(Seal)

W. P. Bartel,
Secretary of the Interstate Commerce Commission.

3455 F. D. No. 10882. BG:ADG

INTERSTATE COMMERCE COMMISSION,
Washington.

July 22, 1935.

Finance Docket No. 10882.

In the Matter of the Chicago, Milwaukee St. Paul & Pacific Railroad Company Reorganization.

The above entitled proceeding is assigned for hearing on August 5, 1935, ten o'clock a. m., standard time, at office of the Interstate Commerce Commission, Washington, D. C., before Director Sweet.

By the Commission:

George B. McGinty,
Secretary.

3456 ANNOUNCEMENT.

Finance Docket No. 10882.

In the Matter of the Chicago, Milwaukee St. Paul & Pacific Railroad Company Reorganization.

At the public hearing in the above proceeding under the provisions of Section 77 of the Bankruptcy Act, as amended, there may be presented to the Commission a plan of reorganization which the debtor, or any group of creditors being not less than 10 percentum of any class of creditors, are then prepared to present. Parties having a substantial interest in the proceedings will, upon application and for good cause, be permitted at the hearing to intervene.

It is expected that evidence will be presented by the debtor in support of the plan of reorganization filed with its petition to the court, or of any modification thereof which it may suggest. Thereafter opportunity will be given to parties to present evidence in opposition to all or any features of that plan; and other or different plans may be presented by those authorized to do so, together with evidence in support of and in opposition thereto. In the event the parties may require additional time for preparation of evidence in support of, or in opposition to, plans

presented at the hearing, adjournment of the hearing may be arranged.

Following the hearing, or after the conclusion of any adjournment thereof, the Commission will fix a time for filing briefs and upon receipt thereof will render a report in which it will recommend a plan of reorganization (which may be different from any which has been proposed at the hearing), in compliance with subdivision (d) of Section 77, which will be subject to further proceedings as provided in that subdivision. The plan finally recommended by the Commission, and, in its discretion, any other plan of reorganization filed, as provided in that subdivision will be submitted to the creditors and stockholders for acceptance or rejection, in accordance with the requirements of Section 77 and with the rules of the Supreme Court relating to Section 77 proceedings promulgated April 24, 1933.

George B. McGinty,
Secretary.

4542 BEFORE THE

INTERSTATE COMMERCE COMMISSION.

In Re:
Chicago, Milwaukee & St. Paul Railroad Company—Reorganization. } Docket No. 10882.

Hearing Room B, I. C. Building,
Washington, D. C.,
Monday, August 5, 1935.

The above-entitled matter came on for hearing at 10 o'clock a. m., pursuant to notice.

Before:

Commissioner Porter, Director Oliver E. Sweet, Bureau of Finance, and Examiners R. T. Boyden and J. V. Walsh.

Appearances:

Robert T. Swaine of Cravath de Gersdorff, Swaine & Wood, 15 Broad Street, New York City, New York, appearing for debtor.

Kenneth F. Burgess, 11 South LaSalle Street, Chicago, Illinois, appearing for Group of Institutional Investors and Fiduciaries.

Messrs. Harry Hoffman, Theodore E. Rein and Milton E. Mermelstein, 30 Pine Street, New York City, New York, appearing for Anglo-Continentale
4543 Treuhand, A. G., holder of Milwaukee & Northern Railroad bonds,

George L. Shearer, for Stewart & Shearer, 45 Wall Street, New York City, New York, appearing for United States Trust Company of New York as trustee of the General Mortgage of the Chicago, Milwaukee & St. Paul Railway Company, due May 1, 1989.

Meyer Abrams, 134 North LaSalle Street, Chicago, Illinois, appearing for Israel Abrams, Sol Abrams, Henriatta Chattner and Charles Rosenbloom.

Thomas F. Murphy, 41 Broad Street, New York City, New York, appearing for Imperial Trust Company, Ltd., 327 Bay Street, Island of New Providence, Bahamas.

Henry T. Hunt, Interior Department Building, Washington, D. C., appearing for Federal Emergency Administration, Public Works, Harold L. Ickes.

Edwin S. S. Sunderland, of Davis, Polk, Wardwell, Gardiner & Reed, 15 Broad Street, New York City, New York, appearing for Guaranty Trust Company of New York and Merrel P. Callaway, as trustees of the Fifty Year 5% Mortgage, dated as of February 2, 1925, of Chicago, Milwaukee, St. Paul & Pacific Railroad Company.

Mrs. Alice Cunningham Lacey, 73 Elm Street, Jamaica Plain, Massachusetts, appearing for William G. Cunningham, 73 Elm Street, Jamaica Plain, Massachusetts.

Donald MacMillan, Munsey Building, Washington, D. C., appearing for the public interest.

4546 PROCEEDINGS.

Director Sweet: Gentlemen, the Interstate Commerce Commission has assigned for hearing at this time and place the matter of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, debtor. Its petition filed pursuant to

section 77 of the Bankruptcy Act is pending in the District Court of the United States for the Northern District of Illinois, Eastern Division. Pursuant to the statute and the rules of the court, a copy of the petition was filed with the Interstate Commerce Commission. Accompanying the petition, there was filed in the court and with the Commission, a copy of a plan of reorganization prepared by the debtor company.

The purpose of this public hearing is to receive the debtor's plan, and any other plans that may be presented by persons who are entitled under the law to present them, to hear evidence in support of any plans offered, and in opposition to them.

Who appear at this time for the dobtor?

Mr. Swaine: The firm of Cravath de Gersdorff, Swaine & Wood, by Robert T. Swaine, appear for the debtor.

Mr. Hoffman: If your Honor please, may I present at this time a petition of intervention, and for other relief, in behalf of the other bondholders, of whom I represent 45 per cent?

4547 Director Sweet: Please state your name.

Mr. Hoffman: My name is Harry Hoffman. I represent Anglo-Continentale Treuhand, A. G., a corporation of the principality of Liechtenstein. The corporation owns $100,000 principal amount of Milwaukee & Northern consolidated bonds, representing about 45 per cent of the amount of such Milwaukee & Northern consolidated bonds which did not assent to the plan of extension promulgated by the Milwaukee Road about a year before they went into 77, and that plan of extension is dated May 31, 1934.

Director Sweet: Have you distributed copies of your petition?

Mr. Hoffman: No, sir. Unfortunately I arrived only late last night, and I only received them late from the printer last Saturday. I have three copies here for the Commission, which I understand to be in accordance with the rules, and I have here twenty copies of the petition which I can distribute, if the Commission may want.

Director Sweet: You may produce copies for the reporter and distribute copies to those who are present, and we will consider your petition a little later.

Mr. Hoffman: Thank you, sir. I file also a cable authority verifying the petition, which was done in my own name.

(The telegram referred to was filed in the docket.)

4548 Mr. Murphy: If your Honors please, I am in exactly the same position, representing the Imperial Trust Company, Ltd., of the Bahamas, the same kind of bonds, representing $83,000. I have also twenty copies of a petition of intervention and three copies for the Chairman.

Director Sweet: Will you state your name?

Mr. Murphy: Thomas F. Murphy, 41 Broadway, New York.

Director Sweet: Will you distribute copies and furnish three to the reporter?

Mr. Hoffman: I omitted to mention, if your Honor please, that we also have a small interest in the first mortgage non-assented bonds of the Milwaukee & Northern. It happens to be one bond, but I pray for intervention on behalf of that bond as well.

Mr. Abrams: My name is Meyer Abrams of Chicago, Illinois, associated with the firm of Shulman, Shulman & Abrams. I am not yet admitted here, but I expect to make application before I get through. I was allowed to intervene in the proceedings in Chicago, which commenced in the District Court, on behalf of Sol Abrams and Israel Abrams, Henriatta Chatiner and Charles Rosenbloom, and I am presenting here a petition of intervention on their behalf, as the owners of bonds, adjustment gold bonds, series A. I have not sufficient copies to distribute, but I will have them during the day, and I will present them
4549 and I will ask your Honors' leave to file a petition.

Director Sweet: You may do so. You ought to file at least two copies with the reporter.

Mr. Abrams: I will get them all later in the day.

Mr. Burgess: I desire to file an intervening petition on behalf of a group of institutional investors and fiduciary corporations, ten in number, who represent more than $60,000,000 of nine different types of securities issued by the debtor. I have copies for the reporter and an adequate number of copies for distribution.

Director Sweet: You will distribute copies to those who are present, Mr. Burgess?

Mr. Burgess: Yes, sir.

Mr. Sunderland: I desire at this time orally to state—

Director Sweet: What is your name, please?

Mr. Sunderland: Edward S. S. Sunderland, of Davis, Polk, Wardwell, Gardiner & Reed, representing the trustees

of the 50-year mortgage, so-called, dated as of February 2, 1925, of the debtor, under which there are outstanding about $106,000,000 principal amount of bonds. My papers are being prepared, and I am making oral application now, to be supplemented by the written petition, for leave to intervene in behalf of the Guaranty Trust Company of New York and Merrel P. Callaway, as trustees of that mortgage.

4550 Director Sweet: When your papers are ready, you will present copies to the reporter and distribute copies to those in attendance?

Mr. Sunderland: I will.

Mr. Shearer: Your Honor, I would like to be heard orally on behalf of the United States Trust Company of New York, the trustee under the general mortgage of the Chicago, Milwaukee, St. Paul & Pacific. Stewart & Shearer, appearing for the United States Trust Company by George L. Shearer. Later, if the Commission wishes, I can file a petition of intervention, but I understand that those who may object to the plan, are not required to file such a petition. If your practice requires such a petition, I will do so later.

Director Sweet: If you do so, please file such a petition and give copies to the reporter and distribute the copies to those present. I did not get your name.

Mr. Shearer: George L. Shearer of Stewart & Shearer.

Director Sweet: Are there others who wish to note their appearances and file petitions of intervention?

Mr. Jones: My name is Ellsworth D. Jones. I would like to file a petition on behalf of the Union Pacific Railroad Company to intervene in this case. They do not wish to be heard, but would like to be made a party to the case. I have the original and twenty copies.

4551 Director Sweet: You will file copies with the reporter and distribute copies to those in attendance?

Mr. Hoffman: If your Honor please, may I present Mr. Rein of Chicago, of the firm of Sabath, Pearlman, Goodman & Rein, who is associated with me in this case; and Mr. Mermelstein in my own office.

Mr. Rein: I am not admitted to practice, but I am making application now. I am a member of the Supreme Court of the United States.

Director Sweet: Are there others who wish to appear or file petitions?

Mr. Hunt: If the Commission please, I represent the Administrator of Public Works. This is the Chicago, Milwaukee, St. Paul & Pacific hearing, I understand. Is that correct?

Director Sweet: That is right.

Mr. Hunt: The government is a creditor of this railroad to the extent of approximately $3,033,000, loaned on certain equipment trust certificates and other security. We have an interest and desire to appear. My name is Henry T. Hunt, general counsel, Public Works.

Director Sweet: Is it your purpose to intervene?

Mr. Hunt: We would like an opportunity to study this application a little more thoroughly, and determine to what
4552 extent, if at all, these securities are postponed or in any way affected by this proposed plan, and would like to have opportunity to file a brief on the subject.

Director Sweet: Are there other appearances?

Mrs. Lacey: I represent William G. Cunningham, the holder of $25,000 worth of 5 per cent mortgage bonds, Alice Cunningham Lacey, member of the Massachusetts Bar.

Mr. MacMillan: I am Donald MacMillan, and I appear in the public interest.

Director Sweet: Whom do you represent?

Mr. MacMillan: The public interest.

Director Sweet: Have you any clients?

Mr. MacMillan: I will say so.

Director Sweet: Can you name them?

Mr. MacMillan: I prefer not to. I will do it to you in private.

Director Sweet: Do you propose to file a petition for leave to intervene?

Mr. MacMillan: Yes, sir.

Director Sweet: It will be considered when it is presented.

A little later in the progress of the hearing, we will inquire whether there are objections to any of the petitions for leave to intervene.

Unless there are additional appearances, we are now
ready to hear the debtor. Are you ready to proceed,
4553 Mr. Swaine?

Mr. Swaine: Mr. Commissioner and Mr. Director, on behalf of the debtor, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, I desire at this time to present, as the debtor's exhibit No. 1, the plan of reorganization,

dated July 1, 1935, which has been adopted by the debtor and was submitted to the court as an exhibit to the petition which was filed on June 7, and is now submitted to the Commission for its consideration.

(EXHIBIT NO. 1 of debtor received in evidence.)

Mr. Swaine: Inasmuch as the ultimate plan under section 77 will have to be one, first, in ultimate essence, prepared by the Commission itself, we have prepared a memorandum of suggested modifications of the plan as formally adopted by the Board. The modifications which are set out in this memorandum are, with two exceptions, which I will state, corrections not of substance, but corrections of phraseology to obviate misunderstandings, which letters that we have received from various security holders indicate some of the security holders have had with respect to the provisions of the plan. In other words, save for two modifications of substance, they are either items to clarify language or to add provisions which were implied but not expressed in the original plan.

4554 The two modifications of substance, one of them really a modification, the other rather an addition or a filling in of a blank, are these:

When the plan was adopted by the Board of Directors of the debtor, it was thought that there would prove to be no current unsecured liabilities which were not entitled to priority on ordinary equitable principles, and, therefore, if the debtor provided any plan for the issue of new securities to the holders of its funded debt, its formal notes and its stock, and to dispose of by payment in full in cash of the remainder of the debt, it would have done full justice to the situation.

It now develops, however, that there will be a small amount, perhaps as much as one-half million dollars, of unsecured obligations which would not be entitled to priority in an equity proceeding, and which, therefore, should not fairly be paid out of cash. Accordingly, one of the modifications suggested in this memorandum is that unsecured creditors who are not entitled to prority under ordinary equitable principles shall receive for each $100 principal amount of their claims one-half share of new preferred stock and one-half share of new common stock.

The other substantive provision set forth in this memorandum is the filling in of the blanks left for that
4555 purpose in the original plan of the names of the proposed voting trustees. Those names are as follows:

Max W. Babb. Mr. Babb is a member of the Board of Directors and a member of the Executive Committee of the Northwestern Mutual Life Insurance Company; President, Allis-Chalmers Manufacturing Company; a director of the Federal Reserve Bank of Chicago; and a director of the American Hydraulic Corporation, and various other corporations.

Mr. Philip A. Benson. Mr. Benson is president and trustee of the Dime Savings Bank of Brooklyn, New York; a member of a Council of Administration of National Association of Mutual Savings Banks; a member of Advisory Board Chemical Bank & Trust Company; a director of Title Guarantee & Trust Company, and of various other corporations.

Mr. Edward E. Brown. Mr. Brown is president and a director of the First National Bank of Chicago; president and a director of National Safe Deposit Company of Chicago; a director of the Peoples Gas Light & Coke Company of Chicago; and a member of the Chicago Board of Trade, and of various other corporations.

Mr. George B. Cortelyou. Mr. Cortelyou is a director and member of the Finance Committee of New York Life Insurance Company of New York. He was Secretary
4556 of the Treasury under President Theodore Roosevelt. Prior to his recent retirement from active business he was President and a trustee of the Consolidated Gas Company of New York and is now a director of a large number of public utility operating companies and other corporations.

Mr. Frederick H. Ecker. Mr. Ecker is president and a director of the Metropolitan Life Insurance Company. He is also a director of the debtor. He is also a director of the Chase National Bank of New York, and of various other corporations.

I ask permission to submit this memorandum of modifications as the debtor's exhibit No. 2.

(DEBTOR'S EXHIBIT NO. 2 received in evidence.)

Mr. Swaine: Before going on with the introduction of documentary and oral evidence in support of the plan, it might perhaps be helpful if I stated rather briefly the problem which the Board of Directors of the debtor faced before drawing this plan, how they went about the preparation of the plan, and what the plan does in the way of attempting a solution of the problem.

As the Commission knows, the debtor is a product of the reorganization following the receivership, which lasted from 1925 to 1928. It took over its present properties in January, 1928. Its fixed charges, as a result of the
4557 reorganization, had been reduced from something over $20,000,000 to something less than $12,500,000, an amount which was well below the lowest amount which the property had ever earned as the system which it now is, that is, since the Puget Sound reorganization. In the process of that reorganization some $70,000,000 of cash had been raised, of which $52,000,000 was paid to the United States government for loans made during the period of Federal administration. Even after that payment, however, the company was right comfortably situated as to cash. In the first two years of its operation it produced remarkable operating results, having income available for interest on funded debt of over $30,000,000 in 1928, and of $30,000,000, $29,000,000 plus, in 1929. Its descent from this condition of prosperity was rapid. Its earnings dropped in 1930, to $17,900,000, in 1931, to $9,000,000, and in 1932, to an operating deficit of nearly $300,000.

Of course, this property was not alone in that drop, but because of conditions in the territory through which it operated, perhaps its drop was more marked than the drop of most railroads of the country. Speaking in terms of gross revenues, it dropped from $165,000,000 in 1928, to $84,000,000 in the year of the operating deficit, 1932.

4558 Now, despite the fact that the company had started with ample cash resources, despite the fact that its earnings in 1928 and 1929 had produced an ample margin over charges, this decline forced the Board of Directors to recognize, after the 1932 operating deficit, that there was at least a possibility that a reorganization of the capital structure would prove necessary. And following that operating deficit, the members of the Board of Directors and the Executive officers of the company and its counsel have been thinking almost continuously of the problem of the financial structure of the property. That problem was accentuated to the Board not only by the failure of income to sustain fixed charges, but also by reason of the fact that provisions which in the reorganization had been inserted in the mortgages for the protection of the bondholders became a severe burden upon the company.

It was believed at the time of the 1928 reorganization

that railroads were growing instrumentalities, and that no railroad could ever afford to get along with less equipment than it then had. As a protection to the bondholders, and insisted upon by representatives of the bondholders, there was inserted in the mortgages that were issued in connection with the 1928 reorganization a covenant that the company would at all times maintain, subject to the lien of
4559 those mortgages, equipment having a value equal to the value of the equipment on January 1, 1929, and the mortgages prevented the use of equipment purchased under equipment obligations for the purpose of satisfying that covenant.

In the depression it soon appeared that the company did not need an amount of equipment equal to the equipment existing on January 1, 1929, and as equipment became obsolete or worn out and the company faced the necessity of retiring that equipment, there began to develop potential and today actual large deficits in the performance of its equipment maintenance covenants.

Obviously, that meant that the company was without a medium for financing its future requirements, even though earnings came back to something approaching normal.

The Board of Directors was also impressed with the fact that the adjustment mortgage bond interest, which had now become cumulative, was not being met, was piling up a debt which by July 1 of this year had reached the staggering sum of $47,500,000.

As problems of unification of the operation of this property with other properties presented themselves, it was found that other covenants in the mortgages, inserted in the assumed protection, in good faith, of the bonds,
4560 namely, covenants, to maintain the property in its then condition subject to the lien of the mortgage between certain named terminii, operated to prevent the carrying out of the unifications and coordination arrangements which would obviously be in the public interest and really be in the interest of the bondholders themselves.

Those were the problems which the directors began to consider as early as the latter year of 1932, and, obviously, considered more and more actively as the earnings failed to come back to a point to meet the existing fixed charges.

In the late summer of 1934, the Board of Directors had to determine whether they should then go into receivership or into a reorganization proceeding under section 77. It

was hoped that that prosperity which had been around the corner ever since 1930, perhaps, was a little bit nearer, and after discussion with the Reconstruction Finance Corporation and with the Interstate Commerce Commission it was decided to attempt to go through the year 1935 by the making of a loan with the R. F. C. Estimates of the probable earnings of the property through 1935, made in the best judgment of the operating officers, after the utmost care, were submitted to the R. F. C. and to the I. C. C., and the I. C. C. found that the public interest did not require the present reorganization of the property. Those loans
4561 were made, at first only the amount necessary to carry the property by January 1 of this year, but the application of the debtor had covered the amount anticipated to be needed to carry the property through 1935, it being hoped that it would then be able to carry itself.

When the loan was made, the question of a second installment, that is, the amount necessary to carry the property over January 1 of this year, was postponed for later consideration, and well that it was, both in the public interest and in the interest of the security holders themselves, for by February 1 of this year it became clear that the earlier estimates were not going to be realized. Accordingly, the matter was taken up again with the R. F. C., and the changed situation laid before the R. F. C. It was no part of the responsibility of the R. F. C., but it was the belief of the officers of the board that the company must fully disclose the latest information which the company had, and at least tell the R. F. C. what the Board of Directors thought the desirable thing was.

Accordingly, in February of this year, as I said, the matter was laid before the R. F. C., and it was then stated that the Board of Directors had determined that it would be inadvisable that the debtor should apply for any further R. F. C. loans, except as part of a plan of readjustment of the capital structure. The company defaulted in the
4562 payment of equipment obligations on April 1, 1935, and simultaneously gave out a statement to the public press that the preparation of a plan of readjustment would be actively undertaken.

Accordingly, at the instance of the Board of Directors, the executive officers and counsel of the company at once sought conferences with the principal creditors of the company. And I think perhaps it is important that we should

state to you the spirit of our approach to those creditors, because at least rumor has it that that spirit is not universal, and if there be any dissent to the propriety, to the spirit of our approach, we think that that dissent should have full opportunity of expression.

Our feeling, that is, the feeling of the Board and the officers toward the creditors, was something after that indicated by the homely phraseology of our New England President of a few years ago. "We hired the money."

We felt we owed that money. We felt that section 77 of the Bankruptcy Act was not designed by Congress as an instrument by which an unwilling or an unable debtor should indefinitely hold off its creditors, or should try to black-jack those creditors into making sacrifices which would follow down through into the junior classes of se-
curities, in case prosperity of the property ever re-
4563 turned.

We felt that it was our obligation, in approaching these creditors, that we should recognize our indebtedness in full, that we should not ask them to make any sacrifice of legal position, any sacrifice of position and earnings unless we were able to give them some potential advantage by way of concession. The earnings were insufficient to go around. The new structure had to be cut to fit those earnings, but wherever the earnings did not presently provide for the full meaning of the obligations, we asked either the extension of the obligation, if we thought it ever would be possible to meet it, or if it was not possible to meet it, we felt we had given to the creditors whose debt we would never be able to pay the potentiality of profit through some participation of ultimate equity, if the ultimate equity ever came to amount to anything.

We approached our problem, therefore, in the firm determination that we were going to meet our obligations to the utmost of our ability, and to the extent that we were unable to meet them, we intended to preserve existing priorities of the several classes of securities.

Now, we had two alternatives there. We might have just thrown up the sponge and said to the court: "Take this
property. Take the earnings away from the creditors.
4564 Make the capital expenditures out of the earnings, and let us wait five, six, or seven years and see what ultimately happens, and see whether there is ultimate equity here for stockholders and junior bondholders."

It did not seem to us that that was the right course, although it has high authority, and upon the final vote upon the plan, one member of our Board of Directors adhered to that course. It did not seem to us, however, that a road operating in bankruptcy was as efficient as a public servant. As a road operating under public management, we did not think it was fair to the creditors to use their money in that way, but that the best interest, both of the public and of the holders, lay in doing the best we could to provide a means by which whatever income was derived from the property would be apportioned to those security holders in accordance with their segregated rights.

Our other alternative—and I doubt not that there will be those who will urge it upon you—was to make a plan, all of whose securities would be within the then earnings of the property. You will remember that there was some such formula in one of the bills presented in Congress, but I do not know how to draw a plan which will apportion the $300,-
000 operating deficit among security holders. Further-
4565 more, it did not seem to us that even the $8,500,000 of the 1933 earnings or $16,400,000 of the 1934 earnings should be taken as the fair criterion of the earning power of the property, in the light of the fact that it had earned $30,500,000 in 1928 and over $29,000,000 in 1929. Those days may be gone, but they are not so far gone that all American industry and American railroads must contemplate a future of as low earnings as the present indicates.

We, therefore, felt that it would not correctly represent the rights of the security holders in the property to attempt a reorganization on the basis of the present earnings, and particularly did we feel that when we contemplated the drastic results of any such reorganization. The attempt to bring the capital structure within the earnings of the last three years, which include the operating deficit year, would clearly have meant the complete elimination of all the present stock of the company, stockholders who raised the $70,000,000 in 1928, of which $52,000,000 went to the United States Government.

The Board of Directors felt that the stock had a potential equity. On the basis of the Interstate Commerce Commission valuation, that equity is approximately $180,000,-
000. The antecedent record of the company indicated that that equity had a real earning power.

4566 But apart from those questions of valuation and earnings, we felt that the Board of Directors had a

duty toward the stockholders to preserve in any plan which they might present on behalf of the debtor, some opportunity to the stockholders to share in the ultimate prosperity of the company. And, as you will see later on as I outline the plan, we cut that equity which now amounts to some $230,000,000 at par value to less than $40,000,000 at par value.

Now, our first objective in the plan was to cut the fixed charges, as nearly as possible, to the earnings which we had. It was at first suggested that these fixed charges should be cut down to something about six million dollars. As we looked over and made studies of the property, it seemed to us, first, that the Terre Haute lease, which has been severely attacked in various proceedings—it was attacked before the court in the reorganization proceeding of 1928, and, if I am not mistaken in my memory, it was again attacked in the proceeding before this Commission in 1928, and the lease has been elaborately investigated by this Commission on several occasions—but our analysis of the earnings of the Terre Haute property indicated to us that the Terre Haute property was earning a very substantial amount in excess of the rental upon the lease.

4567 Now, here again came this question of approach to the problem. We were told by some that if the Terre Haute were thrown to the dogs and allowed to operate on its own, they would come back to us for a new lease on less than one million dollars. Well, in the first place that was not the situation. We held the Terre Haute property under a lease. So long as we continued to operate the Terre Haute property, we had to do one of two things, as a matter of law: We either had to pay the rental, or we had to pay the earnings from the property, and as the earnings from the property were very materially in excess, as the testimony later will show, it seemed to us that that remedy was not a feasible one, quite apart from the question of its morality.

We were also not unmindful of the fact that our analysis showed that if we threw the Terre Haute property out we would do ourselves more harm than we would do the Terre Haute, both in respect to the loss of earnings from the Terre Haute leaseholds and in respect to the problem of carrying out our goal.

So in our attempt to get the fixed charges down to that theoretical six million dollars, we found out we could not cut out the Terre Haute lease.

We examined the Milwaukee & Northern earnings. We had made an examination of those earnings in con-
4568 nection with the extension plan of 1934. All but something slightly over $200,000 of the Milwaukee & Northern bonds had accepted an extension of five years, when those bonds matured in 1934. Our study then and our studies now indicated, as the testimony will show in detail, that the Milwaukee & Northern properties were earning their interest, substantially, if not entirely, and in addition were contributing a very profitable volume of traffic to the other lines of the system.

Nor were the lines of the Milwaukee indissolubly connected with our lines, because there are competitors in the area that could very well take over the Milwaukee & Northern as a part of those other lines in a future reorganization. It therefore seemed that law, morals, and selfish advantage required us to leave the Milwaukee & Northern bonds undisturbed.

We examined our equipment obligations to see if there perhaps were not some equipment obligations, secured by equipment that we did not now own, by equipment the value of which was less, or the reproduction cost of which would be less than the amounts remaining upon the equipment obligations. We could not find any such case. As the testimony will show, all of our equipment obligations rest upon equipment which is of great value to the property, being the newest equipment, and which would cost us to
4569 replace a sum in excess of the equipment obligations.

Accordingly, we felt that it was quite impossible to reduce fixed charges by any attempt to reduce the interest charge on the equipment obligations.

We did, however, find that if we kept up all these obligations that I have mentioned, we were going to have too many early maturities of principal. And we did not think it unfair to ask of these three classes of obligations, that I have just mentioned, that they do something as the price of having their interest recognized in full and their principal ultimately recognized in full.

In that connection, we asked in the plan that the Terre Haute leasehold interests shall waive forever the equipment vacancies which exist under the mortgage on the leasehold proper, and that they shall give an extension of time in respect of vacancies which may hereafter occur.

We thought it not unfair to ask the Milwaukee & Northern bondholders, notwithstanding that their interest is

being earned, that they give us another ten years' extension of principal, at their existing rate.

And as to the publicly held equipment obligations—I am using that term now in contrast to those held by the P. W. A., as to which we are not asking any extension of principal—as to the publicly held equipment obliga-
4570 tions, we ask that we be relieved of the burden of the earlier maturities, and that the obligations maturing within the next five years be made payable not as they are at present but 20 per cent on the date of present maturity, and 20 per cent each one, two, three and four years after the date of the present maturity, thus materially relieving the burden during the first five-year period.

With those obligations disposed of, we next had to turn our attention to the general mortgage on the properties. The general mortgage, roughly speaking, is a lines upon all the properties east of the Missouri River. There are exceptions to that. It is not a lien, for example, on the Terre Haute leasehold, and there are minor liens as to which it is not a first lien, but, generally speaking, the general mortgage is the gilt-edge security of this property, secured on the heart of its system. It went through the previous reorganization without a suggestion that it be disturbed.

In order to bring ourselves down to the six million dollar ideal, we have had to cut very deeply into the interest of the general mortgage. It would be necessary there, of course, that the general mortgage bondholders make at least one-half of their interest contingent rather than fixed. It seemed a pretty stiff dose, even to us, and our confer-
ences with the general mortgage bondholders indi-
4571 cated that if they were asked to take any such cut as that, there was grave question whether they would assent to the plan in the proportions required by the present bankruptcy act, and whether we might not get into a straight-out foreclosure proceeding with them.

Accordingly, at some sacrifice of our six million dollar ideal, the present plan provides that two-thirds of the interest upon the general mortgage bonds shall be a fixed charge, and one-third shall be a contingent charge for a period. The subject of that period was one of long negotiation, negotiation in which, as the testimony will subsequently develop, the R. F. C. took an active part. On the one hand, it was suggested that it should be a flat five years, and for that many of the large holders of the general mortgage bonds were adamant that they would not make the

concession for more than five years. The R. F. C. on the other hand, took the position that if it were to be called upon to make the additional investment, which I will explain, the general mortgage bonds should take the concession for ten years.

Like much that is in the plan that resulted in a compromise, and the plan provides that the period shall be ten years, but if the contingent interest is earned during any three of the first five or consecutively during the last two of the first five, then the interest shall become fixed
4572 at the end of the first five, or if at any time thereafter the interest is earned for three consecutive years, the contingent interest shall become fixed.

I should have said before I came to the general mortgage bonds, that there were two other classes of debt which clearly should not be disturbed, the Reconstruction Finance notes, which are in effect secured by a lien upon all the property west of the Missouri River, and the Railroad Credit Corporation notes, which are secured in effect by the very valuable lumber properties of the Milwaukee Land Company. Accordingly, the plan contemplates that those two obligations shall be undisturbed, so far as their right to collect their principal and their right of fixed interest is concerned, but again the extensions of the period of maturity in ten years in each case are asked.

Following the general mortgage, the next mortgage to be considered was the fifty-year 5 per cent bonds outstanding in the amount of some $106,000,000 odd. These are the bonds that the stockholders took at par for the $70,000,000 —a little less than that because there was $4 for which they got no bonds. They are the bonds which the stockholders took at par in 1928, out of the proceeds of which $52,000,000 was paid to the United States Government. Except as this issue represents the bonds which were issued for that
4573 cash in 1928, they represent a small fraction of fixed charge obligation given the old first and refunding bondholders in the 1928 reorganization. Even the bonds which the stockholders took have been regarded as good investment and are found in many fiduciary institutions, and the remainder of the bonds are almost altogether held by fiduciary institutions.

Now, of course, it would have been to the advantage of this company as a company to ask these bondholders to turn those bonds into stock, and we were not unmindful of

what the Commission itself has said about the relative advantages of preferred stock and bonds in its opinion upon the 1928 plan, but we faced a practical situation. The people who hold these bonds are people who want bonds, not stock, and if we asked them to take stock instead of bonds, we could not get their assent to the plan.

Accordingly, we have left those bonds as bonds, but the plan turns the entire amount of their interest into a contingent interest.

Now, the question arose, should that contingent interest be cumulative or non-cumulative? Again from the standpoint of the company, it would be grand if it could be made non-cumulative. So that if the bondholder did not earn his 5 per cent in any year, the 5 per cent was gone forever, but there again it seemed to us that there might
4574 be a moral question, and whether we liked it or not. the bondholders with whom we consulted indicated that they would not accept a plan which made that interest non-cumulative.

Accordingly, the plan provides that the interest shall be cumulative during the entire period of the bonds.

Now, we had had some experience with accumulating interest, and we recognized that we might here pile up another very large debt, a debt which continued to pile up without remedy to its holder. Therefore, we recognized that it probably was in everybody's interest to provide that if the accumulations upon those bonds should ever aggregate ten years' interest, then the holders of these bonds might, at their election, demand the principal of the obligations and bring about a foreclosure of their mortgage, or another reorganization.

So that it is perfectly true that in this provision there lay the seeds of a possible reorganization ten years from new, but the price that would have to be paid, if you did not do it, would be the elimination of a large part of the junior securities.

Having passed the general mortgage and the fifty-year mortgage, the next problem is the adjustment mortgage. These were the bonds which in the 1928 reorganization had gone to the old first and refunding mortgage bonds
4575 and to the old Puget Sound bonds. They had $47,500,000 of accumulated interest. It was obvious that they could not continue in a bond status with any hope of being able to pay interest on bonds within a reasonable time, and most of the holders, not all, but most of the hold-

ers of those bonds with whom we conferred, recognized the inevitability of the change of these bonds into stock.

But two questions arose: What kind of stock, and how much stock? Should they be given common stock? Well, if they were given common stock, that would mean that anything given to the existing preferred and common stockholders would be on a parity, and they said to us, and we thought quite properly said to us: "We insist upon the maintenance of a prior right of 5 per cent."

Accordingly, that prior right of 5 per cent in each year was accorded their stock, and then came the question, should that accumulate? We had already provided for accumulations of the non-contingent interest not to want to face accumulations of contingent interest on a preferred stock issue. So the stock was made non-cumulative but compensation was given for the sacrifices thus made by the adjustment bondholders in two respects: First, it was provided that if the earnings should ever get back to a point where the equity showed large earning power, this stock should participate equally, share for share, with the new common stock to be given to existing preferred
4576 and common stock holders, after the latter had received 5 per cent on not less than $40,000,000 of the new common stock.

So that there was given by way of compensation for the non-cumulative feature, this right of participation unlimitedly in any ultimate earning power. Secondly, there was similarly given a right in the—not to these bonds; I should have mentioned that with the 50-year bonds—a right to convert their bonds into this stock as a compensation for the sacrifices, which they had made, which I have pointed out.

The existing stock, it was believed, could probably not pay any assessment at the present time, and, accordingly, the $230,000,000 odd of existing stock is commuted by the plan into common stock of the par value of $25 per share, the present par value, which is preferred as to assets as well as to dividends, getting one share of the new stock for each share of the old, and the present common stock getting one-third of a share for each share of the old.

In this provision we did some violence to the principle which I outlined a little while ago. Theoretically, this preferred stock has a preference as to assets over the common stock, and, therefore, if there were to be an exact qual-

itative preservation of existing priorities, we would
4577 have to insert another preference in there. But it is
so far away from any earning power that we can see today, that it seemed to be a theoretical rather than a practical thing, to create a preferred stock, the creation of which preferred stock would clearly have killed any possibility of the common stock amounting to anything. And, accordingly, instead of having a qualitative preference, the plan provides for a quantitative preference. To be sure, that allows the common stock, the existing common stock, to begin to participate in earnings at some point earlier than they would under the existing capital structure, but, on the other hand, when they do participate they do not participate anything like to the same extent, whereas today there are approximately equal amounts of preferred and common stock outstanding. So that assuming a high earning power, the preferred and common stock would pay approximately equally as to classes. Under the new setup, the preferred stock gets three times as much of the equity as the common stock does. And it seemed to us that this compromise would do justice in the situation.

So much for the amounts and charges of the various securities. That would not have done the job without getting rid of these provisions in the mortgages which have proved onerous, and, accordingly, the plan provides that
the mortgages shall be modified and that the com-
4578 pany instead of being required hereafter to maintain
any set amount in payment of equipment shall be required to maintain only the amount of the equipment which the business requires for efficient operation and in the performance of the new covenants the company is to be permitted to use equipment subject to equipment obligations.

The relief provisions are also to be modified to permit unification and coordination projects.

Now, in order to secure the assent of the bondholders to those modifications, the bondholders asked that hereafter capital expenditures be not financed indefinitely at 100 per cent in bonds, and, accordingly, it was agreed that after the termination of the voting trust, which I will refer to in a minute, bonds should be issued only for 75 per cent of the capital expenditures. In order to provide for that other 25 per cent, we asked from the bondholders and obtained a concession with respect to the application of the income to the payment of these contingent interests upon bonds. In the first place, they agreed that we should have

a contingency reserve, and to be maintained at three million dollars ahead even of interest on the general bonds; that in payment of contingent interest on general bonds and contingent interest upon the 50-year bonds, there might be withdrawn from the available net income the cap-
4579 ital payment of five million dollars a year. And again as compensation to the bondholders for letting us take that five million dollars, it was agreed that that five million dollars should never be capitalized by the issue of bonds or other evidences of indebtedness.

It was also agreed that ahead of the interest upon the 50-year 5's, there might be taken out an amount for the purchase of these deferred equipment obligations.

Now, this somewhat complexity of compensations inter se between the various classes of securities which I have outlined obviously left wide fields of discretion, and the bondholders, not I understand at all in any criticism of the existing management, desired to have their fingers upon the operation of these new provisions. The existing management did not regard that request either as criticism of it or as in any way unreasonable. On the contrary, it seemed to them a perfectly fair request to make. And, accordingly, the plan provides for the creation of a voting trust, pursuant to which at least a majority of the members of the Board shall be representatives of the bondholders. We left it to the large creditors, with whom we had consulted, to tell us whom they wanted as holding trustees.

I should have said, perhaps, that these large creditors consisted of over 20 insurance companies, savings
4580 banks and other fiduciary institutions, and they represented over 100 million dollars of our bonds. The five names which have been read to you today were furnished by those institutions. The debtor had no part at all in their selection except to approve the names which the fiduciary institutions have suggested.

Now the plan contains other detail, which it does not seem to me is essential in this brief summary. Just a few general observations before we go to the testimony.

It is a very easy thing to use startling language in criticism either of managements or of financial plans, particularly if one is negligent both of truth and consistency. And I suggest to the Commission at this hearing for a constructive purpose, and that so far as possible, suggestions which are critical, adversely critical, be met at least with the question: "What else would you do?"

I think the testimony which we are about to put before you will demonstrate to you that the management of this property has a justifiable pride in what it has accomplished since the property came out of reorganization in 1928, notwithstanding the low financial condition to which the depression has reduced it.

I think that the proof which we will introduce will demonstrate that this plan is a fair and equitable representation of the security holders' position. Whether it
4581 will produce a sound financial structure will depend upon clairvoyance, as to which the Board of Directors admit their innocence.

It has been urged in the public press that we have been unduly hasty. I have outlined what we have done to show you that we have not been hasty; that we have been studying the problem long and carefully, and in that study we were not without cognizance of what the United States Supreme Court said in its recent decision in Continental National Bank & Trust Company against Chicago, Rock Island & Pacific Railway Company:

"The delay and expense incident to railroad receiverships and foreclosure sales constituted, probably, the chief reasons which induced the passage of section 77; and to permit the perpetuation of either of these evils under this new legislation would be subversive of the spirit in which it was conceived and adopted. Not only are those who institute the proceeding and those who carry it forward bound to exercise the highest degree of diligence, but it is the duty of the court and of the Interstate Commerce Commission to see that they do. Proceedings of this character, involving public and private interests of such magnitude, should, so far as practicable, be given the right of way both by the court and by the Commission, to the end that they may be speedily determined."

4582 It is in the spirit of the performance of that delay that we asked an early hearing on this plan, and that the Commission fixed this date.

I call Mr. Sparrow.

Director Sweet: Mr. Swaine, when you speak of this plan, exhibit No. 1, as the debtor's plan, I think you mean that it represents the judgment of the Board of Directors as to a plan, and not necessarily the judgment of the corporation?

Mr. Swaine: It has never been submitted to a stockholders' vote.

Director Sweet: It could not in any sense be said to be binding upon stockholders, having been approved as it is?

Mr. Swaine: No, sir, that is correct.

Director Sweet: There is another thing to which I wish to direct attention at this time, and that is the fact that under the rules of the Supreme Court copies of the petition filed with the court, and of other papers, petitions and orders and a great many other papers which were filed in court, are also filed with the Interstate Commerce Commission, transmitted by the clerk of the court to this Commission. Those papers are filed by the Commission and constitute a part of its docket here, and it seems to us
4583 that such papers ought to constitute a part of the record in this proceeding before the Commission. Those papers in the docket are open to investigation by any interested party, on application to the Secretary, at any time. All the papers that have been received so far are in the docket now, and if any other papers are received from time to time, they will be put in the docket. May it be understood that those records, copies of court records, constitute a part of the record in this proceeding?

Mr. Swaine: We will be very glad to have them.

WILLIAM W. K. SPARROW was sworn and testified as follows:

Direct Examination.

Q. (By Mr. Swaine.) Mr. Sparrow, what is your present relationship to the Chicago, Milwaukee, St. Paul & Pacific Railroad Company?

A. I am vice president of the Finance, Accounting and Real Estate Departments of the company.

Q. You are a director also, are you not?

A. Yes, sir, I am a director also.

Q. How long have you been in those positions?

A. Well, I have really occupied those positions since April 1, 1923, with the exception that during the period of the receivership, March 18, 1925, to January 14, 1928, my
4584 title was chief finance and accounting officer, but the duties were the same.

Q. That is, since the debtor took over the property in 1928, you have had that position with the debtor?

A. Yes, sir.

Q. You had a similar position with the debtor's predecessor in title, and you had the same duties for the receivers during the receivership?

A. That is correct.

Q. In the performance of those duties have you familiarized yourself with the articles of association, articles of organization, bylaws and various documents evidencing the company's indebtedness and the security therefor?

A. Yes, sir.

Q. I show you a document marked "Articles of Organization of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, filed March 31, 1927, Certificate of Amendment filed January 17, 1928, Amendment filed June 1, 1935," and ask you whether that is a true and correct copy of the articles of organization of the debtor and of all amendments now affecting said articles? (Handing document to witness.)

A. Yes, sir.

Mr. Swaine: I asked that that be marked Debtor's Exhibit No. 3.

(DEBTOR'S EXHIBIT NO. 3, Witness Sparrow, 4585 received in evidence.)

Q. (By Mr. Swaine.) I show you another document entitled "Bylaws, Adopted March 31, 1927, Amended January 12, 1928, Amended May 24, 1928, Amended November 20, 1929, Amended January 23, 1930, Amended March 20, 1930, Amended July 20, 1933," and ask you whether that is a true and correct copy of the bylaws of the company with all amendments now in effect? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 4, if your Honor please.

(DEBTOR'S EXHIBIT NO. 4, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) I show you a document entitled, "General American Tank Car Corporation—Equipment Trust Series 21, Agreement between General American Tank Car Company (of Illinois) and Fidelity-Philadelphia Trust Company, trustee, dated June 1, 1930," and ask you whether that is a correct copy of the instrument securing the equipment trust? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I ask that that be admitted as Debtor's Exhibit No. 5.

(DEBTOR'S EXHIBIT NO. 5, Witness Sparrow, received in evidence.)

4586 Q. (By Mr. Swaine.) The next document is entitled, "Agreement of Sub-Lease between General American Tank Car Corporation (of West Virginia) and Chicago, Milwaukee, St. Paul & Pacific Railroad Company (of Wisconsin), dated July 21, 1930," and ask you whether that is also a document affecting the General American Tank Car Equipment obligations? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 6.

(DEBTOR'S EXHIBIT NO. 6, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next I show you a document entitled, "The Chicago, Milwaukee, St. Paul & Pacific Railroad Equipment Trust, Series N," with further identifying material on its cover, and ask you whether that contains the documents creating the security for equipment trust series N? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 7.

(DEBTOR'S EXHIBIT NO. 7, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) That is one of the equipment trusts which the P. W. A. holds, is it not?

A. Yes, sir.

Q. Next is an agreement between Austin Western
4587 Road Machinery Company and the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, dated January 30, 1935. Is that an agreement under which certain obligations affecting the purchase of equipment are outstanding? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I ask that that be marked No. 8 and admitted as Debtor's Exhibit.

(DEBTOR'S EXHIBIT NO. 8, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next agreement between Evans Products Company and the debtor, March 13, 1935. Is that similarly an agreement under which equipment obligations are outstanding? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I ask that that be admitted as Debtor's Exhibit No. 9.

(DEBTOR'S EXHIBIT NO. 9, Witness Sparrow, received in evidence.)

Mr. Swaine: I would like to note for the record here that I intend to introduce at this point the obligations which are not disturbed, but I see that one equipment trust, namely, M, has not come in at this point, but for the purpose of any one checking the record of documents covering undisturbed obligations, it will later be found as exhibit No. 54,
4588 when we get there.

Q. (By Mr. Swaine.) In addition to those direct obligations which you have heard me describe in the opening statement, does the debtor have various contingent obligations in respect to other operating railroad properties, such as terminals, etcetera?

A. Yes, sir.

Q. Those are correctly stated, are they not, at the bottom of page 5 of the plan?

A. Yes, sir, they are.

Q. I show you a file of documents bound together, the top one headed "Operating Agreement, Chicago Union Station Company," with the date July 2, 1915, there being four documents in the file, and ask you whether those are the documents evidencing the obligations of the debtor in respect to the Chicago Union Station? (Handing documents to witness.)

A. Yes, sir.

Mr. Swaine: I ask that they be introduced as Debtor's Exhibit No. 10.

(DEBTOR'S EXHIBIT NO. 10, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) I show you two agreements bound together, one operating agreement between Kansas City Terminal Railway Company and ten railway com-
4589 panies, dated June 12, 1909, and the other which is supplemental agreement between Kansas City Terminal Railway Company and Chicago Great Western Railroad Company and the Kansas City Southern Railway Company, dated January 24, 1910, and ask you whether those are the documents evidencing the obligations of the debtor with respect to the Kansas City Terminal? (Handing documents to witness.)

A. Yes, sir.

Mr. Swaine: I ask that those be marked Debtor's Exhibit No. 11.

(DEBTOR'S EXHIBIT NO. 11, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next a document entitled, "The St. Paul Union Depot Company 5-year 5½ per cent Notes, Guarantee Agreement," dated December 15, 1918. Is that the document evidencing the obligations of the debtor in respect to the St. Paul Union Depot Notes? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I ask that that be admitted as Debtor's Exhibit No. 12.

(DEBTOR'S EXHIBIT NO. 12, Witness Sparrow received in evidence.)

Q. (By Mr. Swaine. Next is an agreement between Chicago & North Western Railway Company, Chicago, Milwaukee & St. Paul Railway Company, the Michigan Central Railroad Company, and the Lake Shore & Michigan Southern Railway Company in regard to Indiana Harbor Belt Railroad, dated April 13, 1911. Is that the document evidencing the obligations of the debtor with respect to the Indiana Harbor Belt? (Handing paper to witness.)

4590

A. Yes, sir.

Mr. Swaine: I ask that that be admitted as Debtor's Exhibit No. 13.

(EXHIBIT NO. 13, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine:) Next, a document entitled, "Articles of Incorporation, Bylaws and Mortgage (of August 1, 1916) of the Minnesota Transfer Railway Company," and ask you whether that shows the situation respecting the debtor's obligation toward the Minnesota Transfer Railway Company? Is that the document under which the obligation exists? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I ask that that be admitted as debtor's exhibit No. 14.

(DEBTOR'S EXHIBIT NO. 14, Witness Sparorw, received in evidence.)

Q. (By Mr. Swaine.) Next a document entitled, "Milwaukee & Northern Railroad Company, First Mortgage, dated June 10, 1880." Is that the document under which the Milwaukee & Northern bonds were originally issued? (Handing paper to witness.)

4591

A. Yes, sir.

Mr. Swaine: I ask that that be introduced as Debtor's Exhibit No. 15.

(DEBTOR'S EXHIBIT NO. 15, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next I show you bound together four documents entitled, "Supplements to Milwaukee & Northern Railroad Company First Mortgage, dated May 31, 1913, May 31, 1913, August 18, 1932, May 31, 1934," and ask you whether those are all of the supplements to that mortgage required to evidence the present legal position of those bondholders?

Mr. Hoffman: Before it goes in evidence, may I look at it?

The Witness: Yes, sir. (Handing proposed exhibit to counsel.)

Mr. Hoffman: If your Honor please, I object to this going in evidence exactly in this form, in view of the fact that the indenture dated as of May 31, 1934, does not affect all of the Milwaukee & Northern bonds. If Mr. Swaine will admit that, for the purpose of the record, I have no objection to the pages going in evidence. My objection is to the inference that may be drawn from the papers, that
4592 this document will bind all the Milwaukee & Northern bonds, which it does not.

Mr. Swaine: It shows on its face the only properties bound, those who have assented to it, and I will bring out later those who have assented.

Director Sweet: The objection will be overruled.

Mr. Swaine: I ask that it be introduced as Debtor's Exhibit No. 16.

(DEBTOR'S EXHIBIT NO. 16, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next I show you a document entitled, "The Milwaukee & Northern Consolidated Mortgage, 1884." Is that the document under which the Milwaukee & Northern consolidated bonds were originally issued?

A. Yes, sir.

Mr. Swaine: I offer it as Debtor's Exhibit No. 17.

(DEBTOR'S EXHIBIT NO. 17, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next a file of documents entitled, "Supplements to Milwaukee & Northern Railroad Com-

pany Consolidated Mortgage, dated" respectively, "January 6, 1887, November 22, 1887, June 23, 1890, April 24, 1893, July 28, 1893, May 31, 1913 May 31, 1913, August 18, 1932, May 31, 1934." Are those all the supplements affecting the Milwaukee & Northern consolidated mortgage?

4593 Mr. Hoffman: I make the same objection for the purpose of the record, if your Honor please.

Director Sweet: Overruled.

The Witness: They are.

Mr. Swaine: I offer this as Debtor's Exhibit No. 18.

(DEBTOR'S EXHIBIT NO. 18, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) I show you a document entitled, "Indenture between Milwaukee & Northern Railroad Company and Chicago, Milwaukee & St. Paul Railway Company," dated June 26, 1893. Is that the document by which the Chicago, Milwaukee & St. Paul Railway acquired title and assumed obligations in respect of both of the Milwaukee & Northern bonds? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 19.

(DEBTOR'S EXHIBIT NO. 19, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) The Chicago, Milwaukee & St. Paul Railway Company there mentioned is the predecessor of the debtor?

A. Yes, sir.

Q. And the debtor acquired the properties of the Milwaukee & Northern from the Chicago, Milwaukee & St. Paul Railway Company pursuant to foreclosure de-

4594 cree in what we have previously referred to as the 1928 reorganization?

A. That is correct.

Q. Next a document entitled, "Chicago, Milwaukee & Gary Railway Company to Illinois State Trust Company and St. Louis Union Trust Company, trustees, deed of trust, dated April 1, 1908, First Mortgage Five Percent Gold Bonds." Is that the mortgage under which the first mortgage bonds of the Chicago, Milwaukee & Gary Railway Company were originally issued? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 20.

(DEBTOR'S EXHIBIT NO. 20, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) In March, 1930, did the debtor assume obligations in respect to those bonds?

A. Yes, sir.

Q. I show you a document entitled, "Chicago, Milwaukee & Gary Railway Company, Grantor, and Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Grantee, Indenture." Is that the document by which the debtor acquired the properties of the Gary and assumed obligations in respect to Gary bonds? (Handing paper to witness.)

A. It is. That is correct.

Mr. Swaine: I offer that as Debtor's Exhibit No. 21.

(DEBTOR'S EXHIBIT NO. 21, Witness Sparrow, 4595 received in evidence.)

Q. (By Mr. Swaine.) Now, in the operation of the Gary property, you operate in part over the lines of the Elgin, Joliet & Eastern Railway Company, do you not?

A. Joliet to Aurora.

Q. I show you a document entitled, "Agreement between Elgin, Joliet & Eastern Railway Company and Chicago, Milwaukee, St. Paul & Pacific Railroad Company, September 3, 1930," and ask you if that is the document evidencing your right to operate over the Gap between the two lines of the Gary? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 22.

(DEBTOR'S EXHIBIT NO. 22, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next a document entitled, "General Mortgage, Chicago, Milwaukee & St. Paul Railway Company to the United States Trust Company of New York," dated May 1, 1889, and I will ask you whether that is a copy of the general mortgage of the Chicago, Milwaukee & St. Paul Railway Company, securing the present general mortgage bonds? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 23.

(DEBTOR'S EXHIBIT NO. 23, Witness Sparrow, 4596 received in evidence.)

Q. (By Mr. Swaine.) Next is a folder of documents entitled, "Supplements to Chicago, Milwaukee & St. Paul Railway Company General Mortgage," dated, respectively, September 1, 1891, February 1, 1898, December 12, 1901, April 17, 1913, January 7, 1916, January 29, 1917, June 15, 1921, June 18, 1921, February 6, 1924, September

4, 1924, August 10, 1926, July 29, 1927, November 23, 1927, February 4, 1928, May 1, 1928, October 10, 1929, February 14, 1930, April 8, 1930, June 17, 1930, March 24, 1932; April 15, 1932, April 28, 1932, and August 9, 1932.

Are those all of the supplements to the general mortgage? (Handing papers to witness.)

A. Yes.

Q. They evidence the present legal position of the general mortgage bonds with reference to the debtor and its property?

A. Yes sir.

Mr. Swaine: I offer that as debtor's exhibit No. 24.

(DEBTOR'S EXHIBIT No. 24, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next a document entitled, "Chicago, Milwaukee, St. Paul & Pacific Railroad Company to United States Mortgage & Trust Company and Calvert Brewer, Trustees, First and Refunding Mortgage," dated February 2, 1925. Is that a correct copy of the first and refunding mortgage of the debtor? (Handing document to witness.)

4597

A. Yes, sir.

Mr. Swaine: I offer that as debtor's exhibit No. 25.

(DEBTOR'S EXHIBIT NO. 25, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next a file of documents entitled, "Supplements to Chicago, Milwaukee, St. Paul & Pacific Railroad Company first and Refunding Mortgage," dated respectively, October 10, 1929, April 1, 1930, March 24, 1932, April 28, 1932, August 9, 1932, August 18, 1932, May 5, 1933, and January 16, 1934. Are those all of the existing supplements to the first and refunding mortgage? (Handing document to witness.)

A. Yes, sir, they are.

Mr. Swaine: I offer that as Debtor's Exhibit No. 26.

(DEBTOR'S EXHIBIT NO. 26, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next a document entitled, "Five-year 5 Percent Mortgage Bonds, Chicago, Milwaukee, St. Paul & Pacific Railroad Company to Guaranty Trust Company of New York and Merrel P. Calloway, Trustees, Mortgage and Deed of Trust," dated as of February 2, 1925. Is that the mortgage under which the so-called 50-year 5 per cent bonds were issued and are now outstanding? (Handing document to witness.)

4998

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 27.

(DEBTOR'S EXHIBIT NO. 27, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next a file of documents entitled, "Supplements to C. M. St. P. & P. R. R. Co. 50-year Mortgage and Deed of Trust," dated, respectively, June 17, 1929, August 12, 1929, October 10, 1929, April 1, 1930, December 19, 1930, April 9, 1931, March 24, 1932, April 28, 1932, August 9, 1932, and August 18, 1932. Are those all of the supplements to the 50-year 5 per cent mortgage? (Handing document to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 28.

(DEBTOR'S EXHIBIT NO. 28, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next a document entitled "Chicago, Milwaukee, St. Paul & Pacific Railroad Company to the National City Bank of New York and William W. Hoffman, Trustees, Adjustment Mortgage," dated as of February 2, 1925. Is that the mortgage under which the adjustment bonds of the debtor were issued and are outstanding? (Handing document to witness.)

4599 A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 29.

(DEBTOR'S EXHIBIT NO. 29, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next a file of documents entitled, "Supplements to C. M. St. P. & P. R. R. Co., Adjustment Mortgage," dated respectively June 17, 1929, August 12, 1929, October 10, 1929, April 1, 1930, March 24, 1932, April 28, 1932, August 9, 1932, and August 18, 1932. Are those all of the existing supplements to the existing mortgage? (Handing document to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 30.

(DEBTOR'S EXHIBIT NO. 30, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next a document containing copies of nine promissory notes of the debtor to Reconstruction Finance Corporation, bound in a file entitled, "Chicago, Milwaukee, St. Paul & Pacific Railroad Company, notes to Reconstruction Finance Corporation." Are

those all of the outstanding notes to the Reconstruction Finance Corporation? (Handing document to witness.)

A. Nine is correct.

Mr. Swaine: I offer that as Debtor's Exhibit No. 31.

(DEBTOR'S EXHIBIT NO. 31, Witness Sparrow, 4600 received in evidence.)

Q. (By Mr. Swaine.) Next, part of the collateral held by the Reconstruction Finance Corporation consists of Bellingham Bay and British Columbia Railroad Company bonds, does it not?

A. Yes, sir.

Q. I show you a document entitled, "First Consolidated Mortgage Five Percent Sinking Fund 31-year Gold Bonds, Bellingham Bay and British Columbia Railroad Company to Mercantile Trust Company of San Francisco, First Consolidated Mortgage, Mortgage dated December 2, 1901, bonds dated December 2, 1901." Is that the mortgage under which those bonds were issued and are outstanding? (Handing document to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 32.

(DEBTOR'S EXHIBIT NO. 32, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next, for the purpose of completing the chain of title of the Bellingham Bay, I show you three indentures, one entitled, "Indenture between Bellingham Terminals and Railway Company and Bellingham & Northern Railway Company, October 21, 1912"; another entitled, "Indenture between Bellingham & Northern Railway Company and Bellingham Bay & British 4601 Columbia Railroad Company, October 21, 1912"; and the third indenture being "Indenture between Bellingham & Northern Railway Company and Chicago, Milwaukee & St. Paul Railway Company, December 31, 1918." Do those three documents evidence the acquisition by the Chicago, Milwaukee & St. Paul Railway Company of the properties now securing the Bellingham Bay & British Columbia bonds? (Handing documents to witness.)

A. Yes, sir.

Mr. Swaine: I offer those as Debtor's Exhibits Nos. 33, 34, and 35.

(DEBTOR'S EXHIBITS NOS. 33, 34 and 35, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next a document entitled, "Chicago, Milwaukee, St. Paul & Pacific Railroad Company,

Notes to Federal Emergency Administrator of Public Works." There are in the document photostatic copies of eight notes. Are those the outstanding notes to the P. W. A.? (Handing document to witness.)

A. Yes, sir.

Mr. Swaine: I ask that those be admitted as Debtor's Exhibit No. 36.

(DEBTOR'S EXHIBIT NO. 36, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next a file of documents, consisting of two forms of promissory notes and a letter
4602 dated August 1, 1935, the notes being payable to Railroad Credit Corporation, and the letter being signed by the debtor, by its president, and confirmed by the Railroad Credit Corporation, by its president, those two documents coupled with the so-called marshaling plan evidence the obligations of the debtor to the Railroad Credit Corporation, do they not? (Handing papers to witness.)

A. Yes, sir.

Mr. Swaine: I offer those as Exhibit No. 37.

(DEBTOR'S EXHIBIT NO. 37, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Those are the direct obligations?

A. Yes, sir.

Q. Does the debtor, aside from its direct obligations, have any obligation with respect to the Milwaukee Land Company, to the R. C. C.?

A. Yes, sir.

Q. Document entitled, "Agreement between the Railroad Credit Corporation and C. M. St. P. & P. R. R. Co., Milwaukee Land Co., July 27, 1932"; and another document entitled "Supplemental Agreement between The Railroad Credit Corporation, Milwaukee Land Company, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, June 27, 1934." Do those evidence the rights of the
4603 R. C. C. with respect to the proceeds of the operations of the Milwaukee Land Company? (Handing documents to witness.)

A. Yes, sir.

Mr. Swaine: I offer those as Debtor's Exhibits Nos. 38 and 39.

(DEBTOR'S EXHIBITS NOS. 38 and 39, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Has the debtor been authorized

by the court in the reorganization proceeding to adopt those agreements?

A. Yes, sir, they have been affirmed.

Q. The debtor has affirmed those agreements?

A. Yes, sir.

Q. Without going through the boring experience of separately identifying each of these documents, may I ask the witness to identify the documents which I now show him and which I will ask to have marked as exhibits Nos. 40 to 62, inclusive, and ask him whether those documents cover the security and evidence the legal position of the debtor with regard to all equipment obligations now outstanding, other than those which have been heretofore been specifically described? That will save us a long mass of identification. (Handing documents to witness.)

A. Yes, sir.

Mr. Swaine: I offer those documents as Debtor's 4604 Exhibits Nos. 40 to 62, inclusive.

(DEBTOR'S EXHIBITS NOS. 40 to 62, inclusive, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Mr. Sparrow, what is the relation of the debtor to the Chicago, Terre Haute & Southeastern Railway Company?

A. It has a lease of 999 years.

Q. In addition it owns the stock, does it not?

A. Practically all of it. There are a few shares which have not been turned in.

Q. An inconsequential amount?

A. Yes, sir.

Q. I show you a document entitled, "Indenture of Lease for 999 Years between Chicago, Terre Haute & Southeastern Railway Company, Lessor, and Chicago, Milwaukee & St. Paul Railway Company, Lessee, dated July 1, 1929." Is that the lease in question? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I offer that lease as Debtor's Exhibit No. 63.

(DEBTOR'S EXHIBIT NO. 63, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) That lease was acquired by the debtor in the reorganization of 1928, was it not?

A. Yes, sir.

4605 Q. Which of the company's mortgages is a first lien on that leasehold, that is, the debtor's own mortgages?

A. First and refunding mortgage.

Q. Now, upon the leasehold proper, however, there are outstanding mortgages which are the obligations of the lessor, are they not?

A. Yes, sir.

Q. A document entitled, "Mortgage, the Bedford Belt Railway Company to the Equitable Trust Company, as Trustee, dated June 1, 1898." Is that a mortgage upon the property of the lessor, securing bonds now outstanding? (Handing paper to witness.)

A. Yes, sir.

Q. Are there bonds outstanding called the Southern Indiana Railway Cor any bonds?

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 64.

(DEBTOR'S EXHIBIT NO. 64, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) I show you a document entitled, "Deed of Trust, the Southern Indiana Railway Company to the Equitable Trust Company, Trustee, dated February 1, 1901," and ask you whether that is the document under which those bonds were originally issued? (Handing paper to witness.)

4606 A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 65.

(DEBTOR'S EXHIBIT NO. 65, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next a document entitled, "Supplemental Mortgage C. T. H. & S. E. Ry. Co. to Girard Trust Company, Trustee," dated November 30, 1910. Is that the supplement to the document which we have just had with respect to the Southern Indiana Railway bonds? (Handing paper to witness.)

A. Yes, sir.

Q. Are there no other supplements to that mortgage?

A. No.

Mr. Swaine: I offer that as Debtor's Exhibit No. 66.

(DEBTOR'S EXHIBIT NO. 66, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Next a document entitled, "First and Refunding Mortgage, C. T. H. & S. E. Ry. Co. to Illinois Trust & Savings Bank and William H. Henkle, Trustees," dated December 1, 1910. Does that mortgage secure bonds outstanding on the property of the lessor covered by the lease?

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 67.

(DEBTOR'S EXHIBIT NO. 67, Witness Sparrow, 4607 received in evidence.)

Q. (By Mr. Swaine.) A document entitled "Chicago, Terre Haute & Southeastern Railway Company to First Trust & Savings Bank and Louis Boisot, Trustees, Income Mortgage," dated December 1, 1919. Does that document secure bonds outstanding upon the leasehold properties? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 68.

(DEBTOR'S EXHIBIT NO. 68, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Reference has frequently been made, both in my statement and in the course of your examination, to the 1928 reorganization. I show you a document entitled, "Reorganization of Chicago, Milwaukee & St. Paul Railway Company, Plan and Agreement, dated June 1, 1925, with Modifications of Plan dated November 19, 1925." Is that the document pursuant to which the debtor acquired these properties in reorganization, existing under the then existing law? (Handing document to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 69.

(DEBTOR'S EXHIBIT NO. 69, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) I next show you the deed, 4608 under decrees of the District Courts of the United States for the Northern District of Illinois, Eastern Division, for the Western District of Michigan, Northern Division, for the District of Minnesota, Fourth Division, for the District of Montana and for the Southern District of New York, dated December 31, 1927. Is that the deed pursuant to which the debtor acquired all its present properties that were then existing? (Handing document to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 70.

(DEBTOR'S EXHIBIT NO. 70, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Have you prepared, Mr. Sparrow, in summary form, a statement of all of the securities outstanding as of June 30, 1935, under each of the docu-

ments which have been introduced in evidence, showing the amounts held by the public, the amounts pledged under other system mortgages, and the amounts pledged to secure loans and amounts held in the treasury unpledged?

A. Yes, sir.

Q. I show you this document and ask you if that is the statement? (Handing paper to witness.)

Mr. Hoffman: Before it is marked, I would like to look at it. (Examining paper.)

If your Honor please, I would like to have it made
4609 clear that this document now proposed to be offered in evidence as exhibit No. 71, with respect to the Milwaukee & Northern first mortgage bonds and with respect to Milwaukee & Northern consolidated mortgage bonds does not differentiate between the assented bonds and the unassented bonds, and I would like to reserve the privilege of bringing that out myself, or asking Mr. Swaine to bring it out at this time. I think perhaps if it is brought out at this time, it may clarify the issue. By "assented" I refer to the extension of May 31, 1934.

Mr. Swaine: 39,000 of the first mortgage bonds and 223,000 of the consolidated mortgage bonds did not assent to the extension. Does that satisfy your inquiry, Mr. Hoffman?

Mr. Hoffman: Yes, sir, I wanted to make it clear that there are two classes of those bonds, and they are lumped together in the schedule.

Mr. Swaine: You understand that we do not concede, for the purposes of this proceeding, that they are different classes.

I offer that as Debtor's Exhibit No. 71.

(DEBTOR'S EXHIBIT NO. 71, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Mr. Sparrow, will you please state the total amount of funded debt which your
4610 statement shows to be outstanding in the hands of the public, your exhibit No. 71?

A. That exhibit listed them but did not foot them up.

Q. I wonder if you have them footed up any place so that you can put it in the record at this point?

A. I do not know that I have that handy, Mr. Swaine.

Q. Will you turn to page 9 of the plan and from this table we can perhaps check it.

A. Yes, sir.

Q. Does exhibit No. 71 give a break-down of the present

capitalization which appears in the first column on the left-hand side, as far as debt is concerned?

A. Yes, sir.

Q. And those are the figures—I just want to tie this in—and those are the figures of the amounts outstanding in the hands of the public as shown by exhibit No. 71?

A. Yes, sir. Exhibit No. 71 has one, the Austin Western Machinery lease in there, which is not in this.

Q. And which is mentioned in a footnote?

A. And which is mentioned in a footnote.

Q. Have you been able to make any exact computation of the amount of current obligations not included in funded debt or in the R. F. C. or R. C. C. notes as of June 30, 1935?

A. Yes, sir.

Q. Is it an accurate statement or is it an estimate?

4611 A. Part estimate. I think it is reasonably accurate. Some figures are available from our records and some are not.

Q. Have you got a copy of proposed exhibit No. 72 in front of you?

A. Yes, sir.

Q. Looking at a document entitled, "Chicago, Milwaukee, St. Paul & Pacific Railroad Company, I. C. C. Finance Docket 10882, description of Properties as of June 30, 1935," is that the estimate of those obligations to which you have just referred?

A. Yes, sir.

Q. To what extent is that an accurate statement of records in your own books, and to what extent is it an estimate which you have obtained from employees of the company?

A. Do you want me to go through the items?

Q. Will you please?

A. Taxes and special assessments, $7,238,000. That is about the correct figure. I do not know that we have actually got that on the books, but I think it is approximately so. It includes some assessments, which we have had to get estimates on. Not only the taxes accrued, but there were some special assessments, but I will say that is 99 per cent correct.

Q. Those are all obligations entitled to priority,

4612 are they not, you have been advised by counsel?

A. Yes, sir.

Q. And they are charged against income currently?

A. We accrue the taxes.

Q. That is right.

A. Monthly.

Q. So that they will be paid out of income, and any estimates which you may in the course of your testimony give contemplate that these taxes will be cleaned up currently?

A. These taxes, I might make it plain, are not yet due and payable. They have been accrued in our accounts and when they become due and payable, we will pay them.

Q. What can you say about the next column?

A. "Payrolls and Personal Expenses." There may be a small amount of it estimated, but the main part is from our records.

Q. The amount?

A. $3,984,000.

Q. The next, accounts due railroads and terminal companies, $3,412,886. Will you explain that?

A. That is partly estimated and part of the information we had, but we do not get all the reports from the roads for June before the latter part of July, and they have not all been available for recording. It is substantially correct.

4613 Q. They are being paid currently, are they not, as a part of your routine operation?

A. Yes, sir.

Q. The next item, "Personal Injuries"?

A. There you have a pure estimate. There is information which we have obtained from our different offices over the railroad, and the claims have been filed in the amount of $3,000,000. Our claim department says they won't pay more than $535,000 of them. That is estimated.

Q. And as proper compromises with those claimants from time to time under order of the court are made, they are being cleared up?

A. Yes, sir.

Q. Next, Material and Supplies, $2,896,160. Those are all preferred claims, so-called six-month claims?

A. Yes, sir. That is mainly taken from our records, and I might say that one item there of $945,000, which represents ties delivered in the earlier part of the year for payment in July, have already been paid.

Q. Next, "Claims Filed by Shippers for Overcharge in Freight Rates and Loss and Damage to Freight," $300,000. That is an estimate?

A. That is an estimate. The total amount of estimated claims filed, $540,000, and the claim department estimates $300,000 as the final payment.

4614 Q. And those are compromised and paid currently under order of the court, are they not?

A. Yes, sir.

Q. Next, "Car Mileage and Equipment Rentals Due Others than Railroads"—$460,192. What is that?

A. That is the rental due for private car mileage. That is payable ordinarily the next month. We get the records and the information and pay it in the following month.

Q. Next, "Amount due Pullman Company for Air-Conditioning of Cars Assigned to this Company's Lines"—$447,021. Will you please explain that?

A. The contract has not yet been executed, but there was an arrangement entered into with the Pullman Company for air-conditioning Pullman sleeping cars assigned to the lines of the Milwaukee Railroad. The contract, which is in the process of being executed—it has already been executed by the Pullman Company but we have not yet executed it—contemplates the full cost of the air-conditioning of this equipment being borne between the two companies in the relation of the earnings of the cars. The Milwaukee's proportion is approximately 75 per cent, as I recall the figure.

Q. That is a current operating charge?

A. Yes, sir. The Pullman Company finances the

4615 whole cost and we really amortize it over five or six years, 5 per cent.

Q. Next, "Claims for Property Damage and False Arrest"—$42,000. That amount is an amount at which you expect to compromise and get rid of claims aggregating nearly $350,000, is it not?

A. Yes, sir.

Q. "Electric Current for Power, Light, Water, Gas, and Telephone"—$204,951. That is an ordinary operating charge?

A. That is an ordinary operating charge.

Q. Paid out of current income?

A. Yes, sir.

Q. Next, "Amount of Deposits Held to Guaranty Performance of Contracts"—$200,688. You are in effect trustees for those amounts, are you not?

A. Yes, sir.

Q. Next, "Construction and Repair Work"—$173,060.

That is ordinary operating expense within the so-called six-month rule, is it not?

A. Yes, sir.

Q. Next, "Payroll Deductions Account of Retirement Act," representing amount of deductions made from employees' wages for which checks have not been delivered. Those moneys, too, are in effect held by you in trust?

4616 A. They are held by us in trust.

Q. Next, "Claims for Stock Killed on Right-of-Way," $18,841. In whatever amount those are ultimately determined to be properly settled for, they will be paid for under court orders under a compromise, will they not?

A. That is right, yes, sir.

Q. "Miscellaneous"—$341,837. These are just odds and ends, are they not, which will probably be paid to our claimants and will be paid from current operations?

A. Yes, sir, miscellaneous things which cannot be classified in any one group.

Q. So that while your balance sheet shows your current obligations $20,284,913, none of them are obligations which are required to be provided for in reorganization.

A. No, and you have corresponding assets to many of those items on your balance sheet of some $10,000,000.

Q. I want to make the point clear, that you do not have to issue $20,000,000 in securities to take care of those liabilities?

A. No, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 72.

(DEBTOR'S EXHIBIT NO. 72, Witness Sparrow, received in evidence.)

Mr. Hoffman: Is that only a list of the unsecured obligations?

4617 Mr. Swaine: Yes, sir.

Mr. Hoffman: If your Honor please, I would like to make an observation on the record at this point: That while this list includes only unsecured obligations and claims, I would like to place in the record the thought that we claim that our bonds having matured by their terms on June 1, 1934 should be included in the category of current obligations at the present time, and be provided for in the reorganization. I do not know whether Mr. Swaine intends to submit a list of secured obligations that may be regarded as current, but anyway I would like to have the record show our position.

4618 Q. (By Mr. Swaine.) Mr. Sparrow, have you prepared for the Commission a document of all the properties subject to the various mortgages which have been introduced in evidence, as those properties now are?

A. Yes, sir.

Q. I show you this document entitled, "Chicago, Milwaukee, St. Paul & Pacific Railroad Company, I. C. C. Finance Docket No. 10882, Description of Properties as of June 30, 1935, subject to" general mortgage, first and refunding mortgage, 50-year mortgage, convertible adjustment mortgage, the Bedford Belt Railway Company, first mortgage, the Southern Indiana Railway Company first mortgage, C. T. H. & S. E. Railway Company first and refunding mortgage, C. T. H. & S. E. Railway Company, income mortgage, Milwaukee & Northern Railway Company first mortgage and consolidated mortgage; Chicago, Milwaukee & Gary first mortgage and Bellingham Bay & British Columbia Railroad Company first mortgage; and ask you if that is a correct description of the properties covered by those several mortgages as they existed as of June 30, 1935? (Handing document to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 73.

(DEBTOR'S EXHIBIT NO. 73, Witness Sparrow, received in evidence.)

4619 Q. (By Mr. Swaine.) For the sake of better understanding of those mortgages about which we have been talking, will you briefly summarize the properties under each of those mortgages?

A. Do you wish to introduce the map first?

Q. Yes, before you summarize those properties, perhaps we had better do that. I show you another document entitled, "Chicago, Milwaukee, St. Paul & Pacific Railroad Company, status as of June 30, 1935, of equipment subject to trust agreements and other equipment obligations." Is that a study of the particular units under each of the equipment obligations which have been introduced in evidence, showing the character of the unit, the particular description of the unit, the number of units, the years built, the original cost, the cost of additions and betterments, total cost up to June 30, 1935, ledger value plus additions and betterments, the depreciation accrued, depreciated book value, and the estimated cost to replace both by unit and total, and the estimated cost to replace less depreciation?

A. Yes, sir.

Q. You heard me state to the Commission in my opening that this study evidenced the fact that the equipment covered by these equipment obligations was worth the amount of the obligations to the company. Was that a correct statement?

4620 A. I would like to state the figures.

Q. All right.

A. The total cost to date of this equipment as of June 30, 1935, is $76,919,669. The estimated cost to replace less depreciation $52,211,787, and the amount of outstanding items, $26,558,676.

Mr. Swaine: I offer that as exhibit No. 74.

(DEBTOR'S EXHIBIT NO. 74, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Now, referring to the description of properties, have you caused to be prepared a map showing the mortgage position of the several liens upon the properties?

A. That is a White & Kemble's map.

Q. But you have corrected it and brought it down to date?

A. Yes, sir.

Q. That is a map showing visual presentation of the mortgage properties, and I offer it as Debtor's exhibit No. 75.

A. Yes, sir.

(DEBTOR'S EXHIBIT NO. 75, Witness Sparrow, received in evidence.)

Mr. Swaine: Perhaps you would like to follow this map as the witness describes it. (Handing copies of map to presiding officers.)

4621 Q. (By Mr. Swaine.) Now, will you answer the question which I asked previously, give a brief description of the properties under the several mortgages, of which a complete description was given in exhibit No. 73.

A. The general mortgage first is indicated on the map with the yellow and black dots. It is the top line on the lines running horizontally, and it is the right-hand line on the vertical line. The general mortgage, of which there are $150,000,000 of bonds authorized and issued and $137,788,000 of which are outstanding in the hands of the public, and $11,212,000 pledged with the R. F. C., is secured by a first lien on 6,054.88 miles of road, of which 6,043.62

miles are wholly owned and 11.26 miles jointly owned, (including important terminals at Chicago, Illinois; Milwaukee, Wisconsin; St. Paul and Minneapolis, Minnesota; Kansas City, Missouri; Council Bluffs, Sioux City, Cedar Rapids, Dubuque and Ottumwa, Iowa; and Aberdeen, South Dakota) located in the states of Illinois, Iowa, Minnesota, Missouri, North Dakota, South Dakota, and Wisconsin.

It is also a first lien on valuable trackage rights under agreements with other companies, and on 1,030 steam locomotives, 24,690 freight cars, 885 passenger cars, and 2,013 units of work equipment. It is also a first lien on 119 locomotives, 32,441 freight cars, 79 passenger cars, and 28
4622 units of work equipment subject to $25,031,319 of equipment obligations outstanding.

That briefly summarizes the general mortgage.

Now, you will find in the back of the exhibit which has been introduced an appendix A, the list of that equipment by classes and the amount subject to equipment trust obligations and the amount subject to different mortgages, subject to outstanding or prior lien of the equipment obligations.

Now, the first and refunding mortgage, which is indicated on the map by the red line, colored red, the total amount of bonds issued under that mortgage, $9,866,000, pledged to secure Reconstruction Finance Corporation loans, $6,000,000; pledged to secure Federal Emergency Administration of Public Works loans, $2,665,000; and pledged with the trustee under equipment trust series M, $258,000; held in the treasury of the company, $943,000.

This mortgage is secured by a first lien on 3,435.33 miles of road, of which 3,358.13 miles are wholly owned and 77.20 miles jointly owned, (including important terminals at Spokane, Seattle and Tacoma, Washington) located in the states of Illinois, Iowa, Idaho, Michigan, Minnesota, Missouri, Montana, North Dakota, South Dakota, Wisconsin and Washington. It is also a first lien on the lease-
4623 hold interest under the lease from Chicago, Terre Haute & Southeastern Railway Company dated July 1, 1921. It is also a first lien on valuable trackage rights under agreement with other companies and on 114 locomotives, six units of floating equipment and 24 units of work equipment; and also a first lien on capital stock and bonds pledged under the mortgage.

It mainly comprises the Indiana Harbor Belt stock and certain bonds, first and refunding bonds of the Terre Haute.

It is secured by a second lien on all properties on which the Chicago, Milwaukee & St. Paul Railway Company general mortgage; Milwaukee & Northern Railroad Company, consolidated mortgage; Chicago, Milwaukee & Gary Railway Company, first mortgage; and Bellingham Bay & British Columbia Railroad Company, first mortgage, are a first lien.

It is secured by a third lien on the properties on which the Milwaukee & Northern Railroad Company, first mortgage is a first lien and the Milwaukee & Northern Railroad Company, consolidated mortgage, is a second lien.

That generally describes the property subject to the first and refunding.

I do not think it is necessary to detail the descrip-
4624 tion of the 50-year mortgage, $106,395,096 principal amount outstanding. That mortgage is secured by a second, third and fourth lien on the properties on which the first and refunding mortgage, just described, is a first, second, and third lien.

The Chicago, Milwaukee, St. Paul & Pacific Railroad Company convertible adjustment mortgage, total amount of bonds outstanding, $182,873,693, is secured by a third, fourth, and fifth lien on the properties on which the 50-year mortgage is a second, third and fourth lien respectively.

Coming to the obligations of the leased property of the Terre Haute, the Bedford Belt Railway Company first mortgage total bonds issued, $350,000, amount outstanding in the hands of the public, $250,000, pledged with trustee of Chicago, Terre Haute & Southeastern Railway Company first and refunding mortgage, $100,000. That is secured by a first lien on the properties leased from the Chicago, Terre Haute & Southeastern Railway Company, made up of 4.66 miles of line located at Bedford, Indiana, and which extends from Bedford up to Oolitic.

The Southern Indiana Railway Company first mortgage, total bonds issued and entire amount outstanding in the hands of the public, $7,287,000, secured by a first lien on
property leased from Chicago, Terre Haute & South-
4625 eastern Railway Company, consisting of 240.92 miles of road located in the state of Indiana and extending from Illinois state line to Westport, Indiana and branches. It is also a first lien on seventeen locomotives, 566 freight cars, 5 passenger cars, and 46 units of work equipment, and also a first lien on 1,037 freight cars subject to $988,118

equipment obligations outstanding; and also a first lien on capital stock pledged under the mortgage. It is also secured by a second lien on all property on which The Bedford Belt Railroad Company first mortgage is a first lien.

The Chicago, Terre Haute & Southeastern Railway Company, first and refunding mortgage: Total bonds issued $9,573,000, outstanding in the hands of the public, $8,056,000; pledged with the trustee, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, first and refunding mortgage, $1,515,000; held in treasury of Chicago, Terre Haute & Southeastern Railway Company, $2,000.

Secured by first lien on property leased from Chicago, Terre Haute & Southeastern Railway Company consisting of 115.17 miles of road extending from Chicago Heights, Illinois to Illinois-Indiana state line and including 0.90 miles at Blue Island Yard, Illinois; also secured by a first lien on 11 locomotives, 1,052 freight cars and 29 units of work equipment; also a first lien on 511 freight cars
4626 subject to $532,882 equipment obligations outstanding. Also first lien on capital stock and bonds pledged under the mortgage.

It is further secured by a second lien on all properties on which The Southern Indiana Railway Company, first mortgage, is a first lien; and is secured by a third lien on all property on which the Bedford Belt Railway Company, first mortgage, is a first lien and the Southern Indiana Railway Company, first mortgage, is a second lien.

The Chicago, Terre Haute & Southeastern Railway Company, income mortgage: Total bonds issued, $6,500,000; the amount outstanding in the hands of the public, $6,336,000; held in the treasury of Chicago, Terre Haute & Southeastern Railway Company, $164,000.

Secured by second, third and fourth lien on property leased from Chicago, Terre Haute & Southeastern Railway Company on which Chicago, Terre Haute & Southeastern Railway first and refunding mortgage is a first, second, and third lien respectively.

The Milwaukee & Northern Railroad Company, first mortgage:

Total bonds issued, $2,155,000; the amount outstanding in the hands of the public, $2,117,000; and pledged under Chicago, Milwaukee, St. Paul & Pacific Railroad Com-
4627 pany first and refunding mortgage, $38,000. Matured June 1, 1934. As of June 30, 1935, all bonds outstand-

ing except $39,000 had been assumed by Chicago, Milwaukee, St. Paul & Pacific Railroad Company and extended to June 1, 1939.

It is secured by a first lien on 125.74 miles of road, of which 109.94 miles are wholly owned and 15.80 jointly owned, all in the state of Wisconsin, and comprising lines from North Milwaukee to Green Bay, and branch to Appleton. The Milwaukee & Northern Railroad Company first mortgage, and consolidated mortgage, are a first lien on one all wood passenger and baggage car, 11 old passenger cars classified as work equipment and one all wood business car.

The Milwaukee & Northern Railroad Company consolidated mortgage:

Total bonds issued, $5,092,000; amount outstanding in the hands of the public, $5,072,000; and pledged under Chicago, Milwaukee, St. Paul & Pacific Railroad Company, first and refunding mortgage, $20,000. Matured June 1, 1934. As of June 30, 1935, all bonds outstanding except $223,000 had been assumed by Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and extended to June 1, 1939.

It is secured by a first lien on 266.56 miles of road, comprising line from Green Bay, Wisconsin to Champion
4628 and Ontonagon, Michigan, via Channing, Michigan, branch to Menominee, Michigan, and 1.37 miles of road to Oconto, Wisconsin. The Milwaukee & Northern Railroad Company, consolidated mortgage and first mortgage are a lien on one all wood passenger and baggage car, 11 old passenger cars classified as work equipment, and one all wood business car. Also secured by second lien on 125.74 miles of road on which the Milwaukee & Northern Railroad Company, first mortgage, is a lien.

Chicago, Milwaukee & Gary Railway Company, first mortgage:

Total bonds issued, $5,700,000; amount outstanding in the hands of the public, $3,000,000; pledged under Chicago, Milwaukee, St. Paul & Pacific Railroad Company, first and refunding mortgage, $2,700,000.

Secured by first lien on 82.85 miles of road, of which 82.66 miles are wholly owned and 0.19 mile jointly owned, comprising lines from Delmar to Joliet, from Aurora to Kirkland and from Camp Grant to Rockford, all in the state of Illinois. It is also a first lien on one locomotive, three cabooses and five units of work equipment, and on $419.40 on deposit with trustee.

Bellingham Bay & British Columbia Railroad Company, first mortgage:

4629 Total bonds issued, $301,000; none outstanding in the hands of the public. Matured December 1, 1932, and are owned by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and are pledged as part security for Reconstruction Finance Corporation and the Railroad Credit Corporation loans—$301,000.

Secured by a first lien on 66.98 miles of road, all in the state of Washington, and extending from Bellingham to Glacier, Squalicum Creek Line; from Hampton to Lynden; and from Goshen to Kulshan. Also a first lien on two cabooses, three old passenger cars assigned to work service and eight units of work equipment.

That comprises the description of these several mortgages.

Mr. Swaine: In other words, our exhibit No. 73 is a correction and bringing down to date of the printed matter which you would normally find on the White & Kemble's. map.

I wish to offer Debtor's Exhibit No. 75.

(DEBTOR'S EXHIBIT NO. 75, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Mr. Sparrow, have you prepared a break-down of the I. C. C. valuation of the property of the debtor and of the Terre Haute, together with addi-

4630 tions and betterments made since the date of the I. C. C. valuation, showing separately as of June 30, 1935, that part of the valuation attributable to each of the several properties subject to these various mortgages?

A. Yes, sir.

Q. I show you a document headed "Chicago, Milwaukee, St. Paul & Pacific Railroad Company—Valuation." Is that the document? (Handing paper to witness.)

A. Yes, sir, that is the document.

Q. In addition to breaking down valuation, you have simultaneously broken down investment account, have you not?

A. Yes, sir.

Mr. Swaine: I offer this as Debtor's Exhibit No. 76, and as the Commission may be interested in it, it might be well if you would explain it, Mr. Sparrow.

(DEBTOR'S EXHIBIT NO. 76, Witness Sparrow, received in evidence.)

Director Sweet: The hearing will be in recess until 1:30.

(Whereupon, at 12:30 o'clock p. m., the hearing was adjourned until 1:30 o'clock of the same day, Monday, August 5, 1935.)

4631 After recess, 1:30 p. m.

Examiner Sweet: You may proceed.

WILLIAM W. K. SPARROW testified further as follows:

Direct Examination (Continued.)

Q. (By Mr. Swaine.) Mr. Sparrow, I believe just before the luncheon recess, you were asked to explain the break-down on the I. C. C. valuation between the various properties, and I think I had passed out to the Commission the copies of your break-down.

A. Exhibit No. 76 is a valuation of the property owned and used for common carrier purposes as of June 30, 1935, of the lines of railroad comprising the Milwaukee system, made in accordance with our understanding of the findings of the Interstate Commerce Commission in Finance Docket No. 3908, "Excess Income of St. Louis and O'Fallon Railway Company," i. e., to the final valuation there is added the net increase in investment in properties devoted to transportation service as determined from the carrier's returns to Valuation Order No. 3, depreciated to the same per cent that cost of reproduction less depreciation was of cost of reproduction new in the final valuation, and for all property added between June 30, 1914, and the valuation date substitutes for cost of reproduction less depreciation,

4632 as included in the final valuation, the actual cost less depreciation.

The valuation brought down to date as of June 30, 1935, for Chicago, Milwaukee, St. Paul & Pacific Railroad is shown as $702,547,315, and in like manner the value of the property of the Gary as of June 30, 1915, $2,291,092; and of the Chicago, Terre Haute & Southeastern Railway, $23,608,100, making a grand total of the property owned and used for common carrier purposes comprising the Milwaukee System of $728,446,507.

Now, a break-down of that valuation has been made as between the properties subject to the lien of the several mortgages. Of that total, $468,629,607 is subject to the lien

of the general mortgage, subject to outstanding equipment obligations of $24,969,119.

The Milwaukee first and refunding mortgage—$218,528,020—

Q. Before you go on from that, that is the property plus the first and refunding mortgage which is a first lien on the bonds being pledged, none being outstanding otherwise except for $900,000 odd in the treasury, and upon which the 50-year bonds are a second lien, and the adjustment mortgage bonds are a third lien, are they not?

A. Yes, sir. Property subject to Milwaukee & Northern mortgages, $12,755,608. Bellingham Bay & British
4633 Columbia first mortgage, $2,255,600. Chicago, Milwaukee & Gary first mortgage, $2,291,092. Chicago, Terre Haute & Southeastern, all mortgages (subject to outstanding equipment trust obligations of $1,521,000—$23,648,038; and not subject to the lien of any mortgage—$338,542, or a grand total the same as that previously given for the valuation of $728,446,507.

The exhibit further shows in comparison with this valuation the capitalization as of June 30, 1935, including obligations of the Terre Haute, certain notes to the R. F. C. which are short term notes and are classified as funded debt, and the Railroad Credit Corporation debts and the accumulated interest to June 30, 1935, on the adjustment bonds.

That capitalization is subdivided as follows:

Fixed interest bearing obligations—320—

Commissioner Porter: Does not the exhibit speak for itself? What is the use of that?

Mr. Swaine: I do not think it is necessary to explain that.

The Witness: All right.

Q. (By Mr. Swaine.) Now, if you will come down and explain your break-down of the investment, but before leaving that, just for the purpose of emphasizing the point,
Mr. Sparrow, the present capitalization is approxi-
4634 mately $47,000,000 over the valuation in the aggregate, is it not?

A. That is when you include the adjustment bond interest, about $47,000,000.

Q. Whereas the new capital which refunds the adjustment is $137,000,000 under the valuation?

A. That is correct.

Q. Coming down to investment, is there any explana-

tion that you want to make to the Commission other than the exhibit itself?

A. I do not think so. I think it speaks for itself.

Q. The book investment of the several mortgage properties shows roughly the same relationships that the valuation itself does?

A. Yes, sir.

Q. And produces a total, as shown by the exhibit, of $719,000,000 odd?

A. Yes, sir.

Q. Have you caused to be prepared charts showing the freight traffic density of the lines of railroad subject to the various mortgages for the years 1931, 1932, and 1933?

A. Yes, sir. They are the Copeland charts, with the exception of 1932, which was prepared by ourselves.

Q. I show you a document prepared by the Chi-
4635 cago, Milwaukee, St. Paul & Pacific, revenue and non-revenue net ton miles, years 1931, 1932, and 1933, and ask you if that is the study which you made? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I ask that that be introduced as Debtor's Exhibit No. 77.

(DEBTOR'S EXHIBIT NO. 77, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) You have a copy of that before you. Is there any explanation or amplification of that which you think will be helpful?

A. I do not think so; no, sir.

Director Sweet: What information have you about the traffic situation on the lines of the Milwaukee which enables you to say whether or not you believe this to be reasonably accurate?

The Witness: As to that density chart being reasonably accurate?

Director Sweet: Yes, sir.

The Witness: We supplied all the information to Mr. Copeland in the preparation of those charts, all coming from our freight auditor's office. While the charts are compiled by Mr. Copeland, he got the information from us.

Director Sweet: Did he correctly transcribe the
4636 information you gave him?

The Witness: I cannot swear to that.

Mr. Swaine: To the best of your belief?

The Witness: To the best of my knowledge and belief it is. I do not think we have since checked that, but we have supplied all the information to him.

Director Sweet: Is this chart used and relied upon?

The Witness: This chart is used and relied upon by all railroads. He is a generally recognized authority on density charts and prepares them for nearly all railroads.

Mr. Swaine: While the Commission has that density chart before it, the Commission's particular attention is called to the traffic density on the lines of the Terre Haute.

Q. (By Mr. Swaine.) Have you prepared a balance sheet in accordance with the accounting rules of the Interstate Commerce Commission of the debtor, as of May 31, 1935, with supporting schedules in the form requested by the Commission?

A. Yes, this balance sheet was prepared and certified to by our comptroller, Mr. Wilson.

Q. I show you a document entitled, "General Balance Sheet as of May 31, 1935, and Supporting Schedules." Is that the balance sheet? (Handing paper to witness.)

A. Yes, sir.

4637 Mr. Swaine: I offer that as Debtor's Exhibit No. 78.

(DEBTOR'S EXHIBIT NO. 78, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Let me ask you if it is your anticipation that a balance sheet as of June 30, 1935, will show any substantially different conditions than that?

A. I do not think so except as to that equipment trust J, which matured June 1, which we did not believe would be in a different classification.

Q. Will you explain that one equipment trust difference?

A. That equipment trust J in the balance sheet of June 30 will be in the classification of funded debt matured, unpaid. It will be a change from the present balance sheet.

Q. I understand, but what is the change? I merely want you to give it for the record.

A. You mean the amount of money?

Q. Yes, sir, when you will have paid it.

A. $558,000 principal amount of equipment trust J.

Q. And your June 30th balance sheet will show that as a matured and unpaid obligation?

A. Yes, sir.

Mr. Swaine: I offer that as exhibit No. 78.

(DEBTOR'S EXHIBIT NO. 78, Witness Sparrow, received in evidence.)

4638 Q. (By Mr. Swaine.) Turning now to the specific property, have you prepared a separate map of the Milwaukee & Northern properties showing in greater detail than the main map the property subject to that mortgage?

A. Yes, sir.

Q. Is that document a copy of the map? (Handing document to witness.)

A. Yes, sir.

Q. That is a detailed map of the Milwaukee & Northern properties covered by the first mortgage and the consolidated?

A. Yes, sir.

Mr. Swaine: That is offered as Debtor's Exhibit No. 79.

(DEBTOR'S EXHIBIT NO. 79, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Have you made a study of the earnings of the property subject to the lien of the Milwaukee & Northern mortgage, segregating those earnings, so far as your records permit, from the earnings of the remaining lines of the system?

A. Yes, sir.

Q. Will you please state to the Commission, first, the corporate history of the Milwaukee & Northern lines and, secondly, the method pursued by you in making that

4639 study, and, third, the results of the study?

A. The Milwaukee & Northern Railroad Company (which has long since ceased to have a corporate existence) was incorporated through articles of consolidation dated December 7, 1886, filed in the state of Michigan, September 2, 1887, and in the state of Wisconsin, September 12, 1887. The property of Milwaukee & Northern Railroad Company was acquired by Chicago, Milwaukee & St. Paul Railway Company by deed dated June 26, 1893 for the sum of $6,157,850 paid in the stock of Milwaukee & Northern Railroad Company at par, which has previously been acquired by Chicago, Milwaukee, & St. Paul Railway Company. The property was conveyed subject to the following outstanding funded debt.

Milwaukee & Northern Railroad Company first mortgage 6 per cent bonds, dated June 1, 1880, maturing June 1, 1910, principal amount $2,155,000.

Milwaukee & Northern Railroad Company consolidated mortgage 6 per cent bonds, dated February 11, 1884, maturing June 1, 1913, principal amount $5,092,000.

Making total funded debt $7,247,000.

The total investment in road and equipment shown by the books of Milwaukee & Northern as of the date of the sale was $13,447,104.

4640 The lines subject to the lien of the Milwaukee & Northern first mortgage extend from North Milwaukee to Green Bay, and thence to Appleton, and comprise 109.94 miles of road, all in the state of Wisconsin; together with an undivided one-half interest in 15.80 miles of road jointly owned with the Soo Line between Hilbert and Neenah, Wisconsin. The Milwaukee & Northern Consolidated Mortgage is a second lien on this same mileage and a first lien on 266.56 miles of road, extending from Green Bay, Wisconsin, to Champion and Ontonagon, Michigan, via Channing, Michigan, including branch to Menominee, Michigan, and 1.37 miles of road at Oconto, Wisconsin.

On June 1, 1910, by agreement with Chicago, Milwaukee & St. Paul Railway Company the first mortgage bonds were extended to June 1, 1913, with interest at 4½ per cent. By agreement dated May 31, 1913 between Chicago, Milwaukee & St. Paul Railway Company and Farmers Loan & Trust Company of New York, successor trustee under Milwaukee & Northern Mortgages, Chicago, Milwaukee & St. Paul Railway Company assumed the obligation to pay the interest and principal of Milwaukee & Northern Railroad Company first and consolidated mortgage bonds, in consideration of which the maturity date of the bonds was extended to June 1, 1934, with interest at the rate of 4½ per cent. On January 14, 1928, Chicago, Milwaukee
4641 & St. Paul Railway Company was succeeded through foreclosure and sale by Chicago, Milwaukee, St. Paul & Pacific Railroad Company which, while continuing to pay interest on the bonds as they became due, did not assume the obligation to pay interest and principal.

Pursuant to resolutions adopted at a special meeting of the Executive Committee of the Board of Directors of Chicago, Milwaukee, St. Paul & Pacific Railroad Company on March 1, 1934, a plan was submitted to holders of Milwaukee & Northern first and consolidated mortgage bonds for a five-year extension to June 1, 1939. The extension plan provided that holders assenting to the plan would

continue to receive interest at 4½ per cent and, in addition, would receive $50 in cash for each $1,000 bond so extended. By order dated April 11, 1934, Finance Docket 10398, the Interstate Commerce Commission authorized Chicago, Milwaukee, St. Paul & Pacific Railroad Company to extend the maturity of these bonds to June 1, 1939, by execution of supplemental indentures dated May 31, 1934, under the provisions of which Chicago, Milwaukee, St. Paul & Pacific Railroad Company assumed the obligation and liability in respect of principal and interest of the extended bonds.

As of June 30, 1935, there were outstanding in the hands of the public $2,117,000 principal amount of Milwau-
4642 kee & Northern Railroad Company first mortgage bonds and $5,072,000 principal amount of consolidated mortgage bonds. All except $39,000 of the first mortgage bonds and $223,000 of the consolidated mortgage bonds have been assumed by the Milwaukee and extended to June 1, 1939. In addition to the bonds outstanding in the hands of the public there are owned by the Milwaukee and pledged under its first and refunding mortgage $38,000 principal amount of first mortgage bond and $20,000 principal amount of consolidated mortgage bonds.

That describes the historical part.

Q. Now please explain your analysis of the properties as the basis of your break-down. Perhaps you had better first describe more generally the character of the line and the industries on the line.

A. I think—

Mr. Hoffman: Pardon me. I would like to have the record show that the witness is reading from a typewritten document not in evidence, and I would like to have a copy of that document, if your Honor please, as these are the bonds in which we are primarily interested.

Mr. Swaine: I have no objection to his having a copy.

Director Sweet: Have you a copy that you can supply the gentleman?

Mr. Swaine: We will supply him with a copy after
4643 the hearing, yes, sir.

The Witness: I would like to state as to the ownership of equipment, Mr. Swaine, of the Milwaukee & Northern, as essential to the later explanation of the earnings, this: The equipment owned by Milwaukee & Northern Railroad Company as of the date of its acquisition by Chicago, Milwaukee, St. Paul & Pacific Railroad Company,

June 26, 1893, comprised 34 steam locomotives, 37 passenger train cars, 990 freight train cars and two units of work equipment. As of June 30, 1935, there remained of this equipment one passenger and baggage car, one business car and six units of work equipment converted from passenger cars. Neither of the Milwaukee & Northern mortgages contain a specific measure of replacement obligations.

Q. (By Mr. Swaine.) Will you please describe to the Commission the character of the industries along the line of the Milwaukee & Northern?

A. The Milwaukee & Northern Lines have quite a diversified traffic. The more important points served and the character of the business produced are:

Plymouth:

Canned goods, cheese, furniture and breeder stock.

Chilton:

Canned goods, cheese, beer, condensed milk and aluminum specialties.

Neenah and Appleton:

The latter point is a jobbing center and there are 4644 paper and pulp mills at both points. There are also cold storage plants and flour and feed mills at Appleton. The principal commodities handled at Appleton are sulphur, lime, pulp, pulpwood, papermaking chemicals, rags, coal, livestock, woodenware, furniture and paper products.

Green Bay:

This point is a jobbing center, at which are located railway and public docks (principally coal docks), paper mills, grain elevator, pickle and preserving canneries, a beet sugar factory, cheese warehouses, cold storage plants, wood working plants, fisheries and wholesale hardware, plumbing, grocery and fruit establishments.

Marinette and Menominee:

Marinette is a jobbing center and has a match factory, glove factory, paper mills and coal docks. Menominee has a paper mill, flooring mill, beet sugar factory and wholesale grocery, fruit and fish business.

Iron Mountain:

This point is a jobbing center for the region in which it is located. The Ford Company wood plant and the Von Platen Fox Lumber Company mill are located at this point.

Ontonagon and Mass:

At these points there is a paper mill and cheese
4645 factory. The CMStP&P has a connection with the Copper Range at this point.

McKeever:

Our receipts from the Copper Range consist principally of copper, copper products, forest products, beer and potatoes and our deliveries are oil, lumber, mill products, fruit and general merchandise.

We also have a good interchange of tonnage with the DSS&A at Champion, consisting of forest products, lumber, oils, fruit, machinery and general merchandise of all kinds. The Ford Company lumber received from the DSS&A moves to Iron Mountain and is then reshipped.

Q. In this study, Mr. Sparrow, have you prepared a table showing the character of the products moved in carload traffic on the Milwaukee & Northern during the year ending September 30, 1933?

A. Yes, sir, I have. That analysis, however, is based on study for the four months December, 1932, March, June, and September, 1933, and based on those four months expanded to a year.

Mr. Swaine: I offer that as Debtor's Exhibit No. 80.

Mr. Hoffman: We would like to have a copy of that exhibit, if your Honor please.

Director Sweet: Will you supply the gentleman with a copy of the exhibit?

4646 Mr. Swaine: Yes, sir.

(DEBTOR'S EXHIBIT NO. 80, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) In connection with the extension in 1934, did you make a study of the earnings of the Milwaukee & Northern properties?

A. Yes, sir.

Q. Will you please explain how the basis of that separate study?

A. Freight Revenue: In the ascertainment of freight revenue an analysis was made of each and every shipment for the full year, from which there was determined the total freight charges, which were broken down to foreign lines' proportion and Milwaukee's proportion, and the latter was further divided as between Milwaukee & Northern lines and Milwaukee other than Milwaukee &

Northern lines, which I will refer to hereafter as "Milwaukee" as distinguished from "Milwaukee & Northern". In determining the Milwaukee & Northern's division of these freight charges, it was given the customary short line division, that is a mileage pro rate, with a minimum of 25 per cent. On all business originating or terminating within the Milwaukee Switching District a switching charge was made against the Milwaukee & Northern.

The passenger revenue was developed for the full
4647 period by accumulating the total revenue passenger miles on the Milwaukee & Northern lines and multiplying by the average earnings per passenger mile as developed for the States of Wisconsin and Michigan.

The mail revenue is actual, based upon cars and space used on the lines of the Milwaukee & Northern.

The express earnings: The express messengers and baggagement report the approximate linear feet of car space occupied by express traffic on their runs. This space for cars on the Milwaukee & Northern was priced at 1 cent per linear foot mile to obtain the express revenue accruing to the line. The 1 cent rate per linear foot mile was originally set up in 1919 and 1920 by the express company for determining the revenues in express traffic diverted between railroads. It was checked in June, 1930, by the Milwaukee supervisor of express and found to be substantially correct.

All other Revenues: Sleeping car, milk, switching, station and train privileges, parcel room, storage baggage and freight, demurrage, telephone and telegraph are actual. Sleeping car through traffic apportioned on a mileage pro rate.

As to Operating Expenses: The Milwaukee & Northern lines constitute all Milwaukee-owned mileage in the Superior Division, with the exception of 26.6 miles from
4648 Kelso Junction to Crystal Falls and Iron River. Maintenance of Way expenses, therefore, are the actual costs taken from division records, after clearing the expenses of the line from Kelso Junction to Crystal Falls and Iron River.

Transportation Expenses: These are Superior Division expenses, after clearing the transportation expenses on the line from Kelso Junction to Crystal Falls and Iron River, and also on the E&LS, over which we operate from Channing to Escanaba under a trackage right agreement.

Maintenance of Equipment: Locomotive repairs are the actual repairs made to locomotives used on the lines. Freight and passenger train car repairs were determined by applying to the mileage made by each class the average system repair cost per mile. Depreciation on both locomotives and cars is the Milwaukee & Northern's proportion of system charges based on its ratio of locomotive and car miles to the total locomotive and car miles of the system.

Railway Tax Payments: These were determined by applying to the Michigan and Wisconsin State taxes of the System as paid for the year the percentage that the valuation of the Milwaukee & Northern property was to the valuation of the System property in each state.

4649 Equipment Rents: Rent for private cars is on the basis of the actual private car miles made for the full period. Rents for locomotives and passenger cars are based on the locomotives and cars in use on the lines. On the advice of our Superintendent of Transportation that 1,000 freight cars would adequately handle the business of the Milwaukee & Northern, a rental charge of $132,500 was made, representing interest at 5 per cent on the estimated depreciated cost new of 34 locomotives, 1000 freight cars and 30 passenger train cars. Maintenance of equipment expenses already include the repairs and depreciation charges on the equipment used on the lines.

Joint Facility Rents: These are the actual net debit of rents paid and received at points on the Milwaukee & Northern lines, after an allowance for rent paid by the Milwaukee for the use of Milwaukee & Northern lines from Kelso Junction to Channing. The reason for this credit to Milwaukee & Northern is that the ore producing mines at Crystal Falls and Iron River are located on lines of Milwaukee not subject to the liens of the Milwaukee & Northern mortgages, and, therefore, no ore revenues from these points are included in the revenues of Milwaukee & Northern lines. The Milwaukee, however, in moving this ore to Escanaba has to use the lines subject to the

4650 liens of Milwaukee & Northern mortgages from Kelso to Channing, or eight miles. Rental charge of $15,000 per annum based on the cost of maintenance and taxes and interest at 5 per cent on the estimated cost of the line.

Earnings for the year 1934: An estimate of revenues, expenses and net income for the year 1934, was made in the following manner:

Freight Revenues: We ascertained the station earnings of all stations on Milwaukee & Northern lines for the year ending September 30, 1933, and for the year 1934, and found that 1934 showed an increase of 19.11 per cent. The station earnings are not all Milwaukee system earnings as part of these earnings go to foreign lines, but it seemed reasonable to assume that if these earnings were up 19 per cent the Milwaukee's proportion of those earnings would also be up 19 per cent, and the Milwaukee & Northern earnings would, in like manner, be increased 19 per cent. Freight Revenues for 1934, were, therefore, taken as the 1933 freight revenues increased by 19 per cent.

Passenger, mail, express and all other revenues were determined for the year 1934 in the same manner, as for the year ending September, 1933.

4651 Operating Expenses for the year 1934: These were increased by the same percentage as the percentage of increase in the total Superior Division expenses of 1934 over the year ending September 30, 1933.

Railway Tax Payments: These were determined in the same manner as for 1933, based on payments made for 1934.

Equipment Rents: Private car mileage payments are the payments of 1933 increased in the same proportion that such mileage in the States of Wisconsin and Michigan increased in 1934 over 1933. Freight car rental is the 1933 rental increased 19 per cent to correspond with the increase in freight revenues. No additional rental was made for locomotive and passenger cars as the number used was the same as in 1933.

Q. Now, Mr. Sparrow, I show you a document entitled, "Chicago, Milwaukee, St. Paul & Pacific Railroad Company, estimated net income for the lines subject to the lien of Milwaukee & Northern Mortgages Year ending September 30, 1933 and year 1934," and ask you whether the top block on that document shows the result of the study which you made, as you have described? (Handing paper to witness:)

A. Yes, sir.

Q. In order to have it appear in the body of the
4652 record, there was a failure to earn the interest in the year ended September, 1933, of how much?

A. $95,269.

Q. And it shows what with relationship to the interest for 1934?

A. $46,511.

Mr. Swaine: I offer that document as Debtor's Exhibit No. 81.

(DEBTOR'S EXHIBIT NO. 81, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Now, in that connection, did you also make a study of the earnings of the other Milwaukee lines from traffic originating on or terminating on the lines of the Milwaukee & Northern?

A. Yes, sir.

Q. Will you explain how you did that and what the exhibit shows?

A. The exhibit shows that the revenues of the Milwaukee from all business originating, terminating or passing over the Milwaukee & Northern lines for its haul beyond those lines was $1,352,365 in 1933, and $1,609,314 in 1934. The additional out-of-pocket cost to the Milwaukee of handling this business would be what it could reduce its present expenses if it did not handle this business, which would be small. However, if we applied the sys-
4653 tem freight operating ratios of 64.28 per cent in 1933 and 68.35 per cent in 1934, as the Milwaukee's cost of handling this additional business, we find its net for the year 1933 was $483,065, and in 1934, $509,348, which, when added to the net of the Milwaukee & Northern, shows the total system earnings for these two years in excess of twice the interest charges.

Mr. Hoffman: If your Honor please, in connection with this exhibit, I would like it to be understood that the exhibit is not evidence of the facts therein contained but is merely the expression of opinion of the witness, as he has stated it to be. He has shown he has no personal familiarity with the figures which go into making the exhibit, and he has also made certain arbitrary proportions of earnings and expenses against this line. We would like to reserve the point that the Commission should investigate the actual apportionment as to whether it is fair or not and as to whether the Milwaukee & Northern bonds are entitled to the equipment which has been retired, that has not been accounted for, according to the witness' testimony.

Mr. Swaine: I did not realize that the competency of this witness was challenged.

Q. (By Mr. Swaine.) Do you personally supervise the accounts of the various properties?

4654 A. I do, and these revenues are made up in the freight auditor's office under my direction, and I know exactly how they were made, and they were taken from the waybills that are on file in the freight auditor's office, and the expenses are all taken from our division expenses and records which are kept under my direction as head of the accounting department.

Q. Did you personally superintend the making of these studies, actively participate in them?

A. I did.

Mr. Swaine: Are you satisfied?

Mr. Hoffman: Yes.

Q. (By Mr. Swaine.) Have you prepared a map showing in greater detail than the general map the properties of the Chicago, Milwaukee, & Gary Railway Company and its connection with foreign lines?

A. Yes, sir.

Q. I show you this map, which I ask to be introduced as Debtor's Exhibit No. 82, and ask you whether that is the map? (Handing map to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 82.

(DEBTORS EXHIBIT NO. 82, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Mr. Sparrow, when did the

4655 Gary properties become connected with the Milwaukee System?

A. January 1, 1922.

Q. I show you a document entitled, "Memorandum of Agreement," made on the 31st day of December, 1921, between St. Louis Union Trust Company, as syndicate manager under an agreement dated June 25, 1913, party of the first party, and the Chicago, Milwaukee & St. Paul Railway Company. Is that the document pursuant to which the interest in the property was acquired? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 83.

(DEBTOR'S EXHIBIT NO. 83, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) What was the nature of the original acquisition? What was acquired pursuant to that agreement?

A. The agreement as of December 31, 1921, between Chicago, Milwaukee, & St. Paul Railway Company and St. Louis Union Trust Company, which was the owner and holder of all the securities of Chicago, Milwaukee & Gary, consisting of one million dollars par value of capital stock and $5,798,000 principal amount of first mortgage 5 per cent gold bonds, due April 1, 1948. By the terms of this agreement, the St. Louis Union Trust Company de-
4656 livered to the Chicago, Milwaukee & St. Paul Railway Company, all of the capital stock and $2,700,000 of the bonds, cancelling the remaining $98,000, all of which was in consideration of Chicago, Milwaukee & St. Paul Railway Company guaranteeing payment of $3,000,000 principal amount of first mortgage 5 per cent gold bonds and interest accruing thereon after January 1, 1924.

Q. At that time, of what did the property of the Gary consist?

A. The wholly-owned mileage of the Gary comprised 96.8 miles, extending from a connection with the Terre Haute at Delmar to Joliet, and from Aurora to Rockford, crossing the Milwaukee's Chicago-Omaha main line at Kirkland. It had trackage rights over the New York Central for approximately one-half mile through the City of Momence, and over the Elgin, Joliet, & Eastern Railway Company between Joliet and Aurora, a distance of 22.5 miles.

Q. That original trackage right expired, did it not?

A. The Elgin, Joliet & Eastern gave six months' notice and terminated it.

Q. What arrangement was made?

A. The Milwaukee on September 3, 1930, entered into a new contract with the Elgin, Joliet & Eastern.

Q. That contract has already been introduced?

A. That contract has already been introduced.

4657 Q. In general, what did it provide?

A. It contained all the traffic restrictions of the old contract.

Q. What were they?

A. That provides that the Milwaukee shall not handle any traffic over the tracks of the Elgin, Joliet & Eastern Railway Company which either originates at or is destined to industries or team tracks in the Aurora Switching District or the Joliet Switching District, or any point between Aurora and Joliet, except traffic which originates at or is

destined to team tracks or other facilities of the Milwaukee Railroad at those stations; provided that the Milwaukee shall have the right to handle over the tracks of the Elgin, Joliet & Eastern Railway Company material or supplies for use by the Milwaukee or any of its subsidiaries from or to industries or team tracks within the Aurora or Joliet Switching District.

Now there is a further provision of the contract which provides that the Milwaukee shall not handle any freight traffic over the lines of the Elgin Company unless such freight traffic is handled in road haul service by the Milwaukee Company exclusively, and unless such traffic originates at and also is destined to points on the lines of railroad now owned by or over which the Milwaukee
4658 Company now has the right to operate its engines, cars and trains, except, however, that the Milwaukee Company may handle, in road haul service, freight traffic between points of origin or destination on lines now owned or operated by it and points of origin or destination on lines of railroad which connect with it at points west and north of the Illinois and Des Plaines Rivers.

Broadly speaking, this means the Milwaukee cannot use the Gary for interchange business to lines with which the Elgin, Joliet & Eastern Railway Company connects south and east of the Illinois and Des Plaines Rivers, which means practically all of the lines entering Chicago. The result of this is the Gary can be used only in the movement of business to or from Terre Haute points, exclusive of business interchanged with foreign connections, which moves to or from points on the Milwaukee Road or for interchange with a foreign connection west and north of the Illinois and Des Plaines Rivers.

The new contract also increased the trackage charge from $0.75 to $1.75 per train mile and the minimum rental charge from $33.75 to $75 per day.

Q. Now, Mr. Sparrow, you have pointed out these restrictions. Has any consideration been given to supplanting the Elgin, Joliet & Eastern with a Milwaukee-owned line between these two points?

4659 A. Some consideration was given to that back in earlier times, but it was given up on account of the expense, which was estimated to be close to three million dollars, I think.

Q. Now, is the entire property of the Gary, as acquired by the Milwaukee, still in operation?

A. No, there is a part of the railroad which is not in operation.

Q. Will you please explain what has happened to that part of the line from Kirkland to Rockford?

A. I would say Camp Grant to Rockford. The Milwaukee Railroad has trackage rights over the Burlington, extending from Davis Junction to Rockford, and when it acquired the Gary, never did operate over the Gary line from Rockford to Kirkland, but continued to operate over the Burlington line. It was not until 1930 that that line was officially and formally abandoned.

Q. While not officially and formally abandoned, part of it was unofficially and informally abandoned?

A. I think the Commission is aware of it. The line was not operated or used by the Milwaukee Railroad from the time it acquired the Gary, and it had not been maintained.

Q. What were the bridges like?

A. The bridges had mostly rotted out, and I think it was the Commission's valuation inspector who saw
4660 it one day and came in to see if it had been reported
* * and retired in valuation order No. 3 reports, and found out it had not. We then did retire it from the accounts, and the question then arose as to the covenant with the bondholders under the mortgage to maintain all the property.

Q. Did you go to the bondholders with the problem to get their consent to the abandonment of that line?

A. Yes.

Q. What arrangement was made, generally speaking?

A. The outcome of that was that there was an agreement entered into, whereby, in recognition of the bondholders agreeing to the abandoning of that line, the present Chicago, Milwaukee, St. Paul & Pacific Railroad made an assumption of the bonds.

Q. I show you a document entitled, "Agreement dated May 10, 1929, between Chicago, Milwaukee, St. Paul & Pacific Railroad Company * * * Chicago, Milwaukee & Gary Railway Company, * * * and such holders of the first mortgage 5 per cent gold bonds of the Gary * * * as shall become parties to this agreement," therein called the assenting bondholders, and ask you whether that is the agreement to which you have just referred? (Handing paper to witness.)

A. Yes, sir, that is the agreement.

Mr. Swaine: I offer it as Debtor's Exhibit No. 84.

4661 (DEBTOR'S EXHIBIT NO. 84, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) As of June 30, 1935, how many of the Gary bonds had assented to that agreement?

A. $2,592,000, or 86.4 per cent.

Q. Will you please state the position of the Gary with respect to equipment?

A. On January 1, 1922, the Gary owned 15 locomotives, eight cabooses, six freight cars and a few old units of work equipment. It also had certain equipment subject to the lien of outstanding equipment trust certificates. Under the terms of the agreement of December 31, 1921, Chicago, Milwaukee & St. Paul Railway Company assumed no obligation in respect of this equipment, releasing it to St. Louis Union Trust Company. With the exception of three cabooses and one locomotive, all of this equipment has now been retired. The locomotives were retired late in 1934.

Q. Are there new obligations which replaced any definite obligations in the Gary mortgage?

A. There are no definite or specific obligations in the Gary mortgage.

Q. Merely a covenant to operate with reasonable safety and expedition?

A. And maintain sufficient rolling stock, and so forth.

4662 Q. What is the proportion of the value of the property shown by the I. C. C. valuation attributable to the Gary?

A. $2,789,475 was the valuation, and the Commission's final valuation, June 30, 1915, and brought down to date would be $2,291,092.

Q. That difference is due to the retirement or abandonment of property?

A. Yes, sir.

Q. What is the book value of the investment?

A. The Milwaukee's investment?

Q. The Milwaukee's investment.

A. The Milwaukee carried on its books, $2,745,173.

Q. Prior to this acquisition by the Milwaukee, what was the earning power of the Gary?

A. The period of Federal control and subsequent guaranty period (1918, 1919, and 1920) afford no indication of the average earning power of the property. The test pe-

riod which was used for measuring the standard line under Federal control, June 30, 1914, to June 30, 1917, showed an average annual deficit for the three years of approximately $46,500. The road, as a result of negotiations, was finally allowed compensation by the Railroad Administration of $75,000 a year.

Q. Have you made any study of the earnings of the Gary, so far as they can be segregated since the acquisition of control by the Milwaukee?

4663

A. Until 1930, the Gary was operated, while operated, as a part of the Milwaukee, it was a separate railway.

Q. What income did its separate operation show?

A. It kept separate accounts and made annual reports to the Commission, and these reports showed net income available for interest as follows:

In 1922, a deficit of $639,291; in 1923, a deficit of $212,639; in 1924, income of $72,340; 1925—$245,177; in 1926—$206,919; in 1927, a deficit of $25,955. That decit was largely due to the coal strike in that year. In 1928, it had an income of $133,350, and in 1929, $180,622.

Q. What is the character of that traffic?

A. I would like to make some explanation of those earnings.

Q. Very well, if you please.

A. Those earnings are very largely due to the bridge traffic that was moved by the Milwaukee over the Gary, mostly coal, the larger part of which was company coal. This bridge traffic accounted for about 50 per cent of the total revenues of those years. And that business could have been moved—and I will go into that in more detail later—over the Milwaukee's lines via Bensenville and Kirkland and Delmar up through Blue Island, the Milwaukee's Bensenville yard, and out over its Illinois Division.

4664

Q. Since 1930, have separate accounts been kept?

A. No, sir.

Q. Have you made studies of the earnings since 1930?

A. Yes, we have made the best estimates we could.

Q. Will you please state the basis of those estimates?

A. It is difficult to make an analysis of the earnings of the Gary and the expenses, for the reason that it is in two separate operating divisions of the Milwaukee and constitutes a small part of the mileage of those divisions. The only way that the expenses could be determined would

be to go through the division records, segregating the labor and material costs of the divisions in question that applied to the Gary. This would involve considerable work, and probably take several months. In the time available, the best estimate possible has been made, but it is only an approximation, and the procedure was as follows:

Revenues: For the period 1924 to 1929, when separate records were maintained we have reliable and accurate records of the revenues and net ton miles, which show that in those years the revenue per net ton mile was 6.02 mills in 1924, 6.12 mills in 1925, 6.08 mills in 1926, 6.79 mills in 1927, 6.60 mills in 1928, and 6.01 mills in 1929. In
4665 arriving at the freight revenues for 1933 and 1934,
we worked up from our wheel reports the ton miles of all freight, including Milwaukee company coal, to which was applied 6.00 mills per ton mile. There are no passenger, mail or express revenues. Other revenues, principally switching and demurrage, were determined on the basis of the ratio of these revenues to the total freight revenues in the period 1924 to 1929, when the separate records were maintained.

Take maintenance of way expenses: Joint facility expenses included in Maintenance of Way are actual. In estimating the other maintenance expenses we have taken the average of the years 1924 to 1929, when separate records were maintained, and have reduced it in proportion to the reduction in similar maintenance of way expenses that have been made on the System in the same period. On this basis the average maintenance of way expenses, other than joint facility, for these two years work out at $738 per mile of road owned, which is not an excessive amount.

As to maintenance of equipment expenses: Locomotive repairs are based on the actual locomotive miles made on the Gary at the average cost per mile of repairing the classes of locomotives used on the Gary in the years 1933
and 1934. Depreciation is actual as accrued on the
4666 books. Aside from a charge of $4,000 covering car
inspection and minor repairs paid for by the using company, no charge was made for maintenance of other equipment as none was owned.

Transportation Expenses: Station expenses were determined on the basis of actual payrolls for four months in each year expanded to a full year for all stations, excluding Rockford. Since the beginning of 1930, the Gary and Milwaukee station expenses at Rockford have been merged.

The Gary's station expense at Rockford was, therefore, determined by reducing the expenses for 1929 in the same ratio that System station payrolls were reduced. Yard service expense was determined by applying to the actual locomotive miles the Gary cost per locomotive mile in the period 1927 to 1929, adjusted to the level of wages and materials in 1933 and 1934, by a deduction of 12½ percent and 10 percent, respectively. Road service expense was determined by multiplying the train miles made on the Gary by the average cost of the three years, 1927 to 1929, adjusted to the level of wages and materials for 1933 and 1934 by again deducting 12½ per cent and 10 per cent, respectively. These percentages were determined from a study made of the Terre Haute and Duluth divisions, where there is little or no passenger service. Superinten-
4667 dence was determined by applying to the total system cost for the years 1933 and 1934 the percentage that the Gary's average of the three years, 1927 to 1929, was of the system expenses in those years. Joint facility expenses chargeable to transportation are actual. All other transportation expenses, which consist principally of casualty expenses, were based on the ratio of these expenses of the Gary to its total expenses for road and yard service in the period 1927 to 1929.

General and Traffic Expenses: These were taken as the average of the three years 1927-1929, reduced to correspond with the reductions made in system expenses in the same period.

Equipment Rents: No rental charge was made for locomotives as the Gary's ownership was considered adequate for the business handled. For freight cars, the average net equipment debit for the period 1924 to 1929 was determined in terms of the average gross commercial freight revenues and this same percentage applied to the estimated revenues of 1933 and 1934.

Joint Facility Rents and Taxes: Actual. On the basis of the foregoing, we estimated the net income available for interest in these two years was $142,000 in 1933, and $60,000 in 1934. This net income, however, is based upon revenues at tariff rates of all bridge traffic moved by the Milwaukee over the Gary between Delmar and Kirk-
4668 land. The only reason it was moved over the Gary was that the Milwaukee having the property and the obligation under its contract with the Elgin, Joliet & Eastern Railway Company to pay a minimum trackage rental

of $27,375 per annum whether the line of that company was used or not, and having to maintain service on the Gary for the local industries, principally the American Steel & Wire Company at DeKalb, it was, without regard to payment of tariff rates for the movement, economical to fill out those trains with bridge traffic, chiefly company coal, which otherwise could have been moved over the rails of the Milwaukee via Bensenville. This bridge traffic moving from Delmar to Kirkland in the year 1933 totaled 13,221 loaded cars, of which 12,249 cars, or 93 per cent, was company coal, and in 1934, 11,265 loaded cars, of which 10,598 cars, or 94 per cent, was company coal. If the cost of handling this business via Bensenville was less than the tariff rates for the movement over the Gary, the Milwaukee would have moved the business over its own lines and saved the difference. To determine this we have in consultation with Superintendent Elliott of the Terre Haute Division and Superintendent Donald (until July 1st Superintendent of the Dubuque & Illinois Division), made an estimate of the
4669 train miles and the additional cost to the Milwaukee of moving this business over its line via Bensenville.

Mr. Swaine: If the Commissioner and Director please, you will see this alternative line on the map, and Bensenville is this point just west of Chicago, and you can follow from the map the alternative movement of traffic which the witness is describing.

Go ahead, Mr. Sparrow.

The Witness: For the year 1933, we estimated 47,192 additional train miles at $1.22 per train mile, or $57,670; additional Indiana Harbor Belt charge, 13,221 cars at $1.00 per car each way or $26,442; additional charge for switching in Bensenville at $1.25 per car each way, $33,052. These charges with freight car per diem total $118,000. For 1934, this additional cost was estimated at $105,000.

In 1928, the bridge traffic totaled 13,912 loaded cars, of which 9,313 cars, or 67 per cent, was company coal, and in 1929, 17,497 loaded cars, of which 11,078 cars, or 63 per cent, was company coal. For the year 1928, we estimated 49,604 additional train miles and the additional cost to move via Bensenville, $163,000, and for 1929, 62,384 additional train miles with an additional cost of $206,000.

Now, I would like to introduce that exhibit—

Mr. Swaine: I would like to have the Commission
4670 have the benefit of having these tables before them.

With that basis of study, have you prepared a tabu-

lar showing of, first, the earnings of the Gary as a separately operated property, and, secondly, another item which you have not yet described, namely, Gary contribution to system operated as a part thereof?

A. Yes, sir.

Mr. Swaine: I would like to introduce that as Debtor's Exhibit No. 85.

(DEBTOR'S EXHIBIT NO. 85, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Will you go ahead with your explanation?

A. The left half of exhibit No. 85 shows for the years 1928 and 1929, as reflected by the books of the Gary for those years, and for the years 1933 and 1934, developed in the manner I have just described, the revenues at tariff rates, expenses, and net income available for interest. The upper right half of the exhibit shows the revenues, expenses and net income available for interest, reconstructed by substituting for the revenues at tariff rates for the bridge traffic the estimated cost of moving this bridge traffic over the Milwaukee lines via Bensenville as if paid to the Gary, and also giving the Gary credit for the return of empties to foreign roads via the Gary at the esti-
4671 mated cost to the Milwaukee of returning via Chicago. On the basis of tariff rates as shown by the exhibit the net income available for interest was $133,350 in 1928,—those are the figures at the bottom of the last half part of the exhibit, as a separately operated railroad, with full tariff rates on this bridge traffic which I have been referring to—$133,350 in 1928, $180,622 in 1929, $142,000 in 1933, and $60,000 in 1934.

Q. That is compared with a charge on the $3,000,000 outstanding bonds of $150,000 a year?

A. $150,000 a year.

Q. Now, modifying that with this other matter that you have discussed.

A. Now, if you substitute for the additional cost to the Milwaukee of moving this bridge traffic for revenue at tariff rates the net income available for interest was a deficit of $5,187 in 1928, and with an income of $7,510 in 1929, a deficit of $34,000 in 1933, and a deficit of $84,000 in 1934.

Q. Now, giving the Gary lines the benefit of estimated earnings of the Milwaukee lines, what is the situation as to traffic originating or terminating on the Gary?

A. Before I leave that, I want to point out that those two parts of the exhibit show that had the Gary been
4672 a separately owned railroad, the Milwaukee would never have moved this traffic over that line, paying tariff rates, because that would have been a great deal more expensive than to handle it in its own trains via Bensenville. For those reasons, I do not think that the figures, using tariff rates—I think they are artificial and they have little value in arriving at the value of the Gary to the Milwaukee, or affording a basis for division of revenues between respective bondholders.

While on this basis, if the Gary is given, in substitution for this bridge traffic, instead of the tariff rates it is given the cost which it would cost the Milwaukee to move it, it shows deficits with the exception of one year. It does give some contribution to the system earnings.

Q. Giving it some credit for giving some contribution to the system earnings, what contribution does it make to system earnings?

A. I am coming to that. We will take the Rockford Terminals first. When we acquired the Gary, we acquired valuable terminal property at Rockford, serving a number of industries, and I have a map which I would like to introduce.

Mr. Swaine: I would like to introduce this map of the Rockford terminals of the Gary as Debtor's Exhibit
4673 No. 86.

(DEBTOR'S EXHIBIT NO. 86, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Will you please explain the terminal situation at Rockford?

A. The small scale insert shows the entrance of the Milwaukee into Rockford over the Burlington, from which it will be seen that its terminal is on the west side of the River and that prior to the acquisition of the Gary it did not serve the industrial section of Rockford on the east side of the River which was served by the Gary. This exhibit also shows that the Interstate Commerce Commission's valuation, brought down to June 1, 1935, of the Rockford terminals of the Gary, is $497,000, of which $282,000 is for land, $180,500 for tracks and $34,500 for buildings.

Q. Have you prepared a statement showing the total freight charges and the Milwaukee proportion of such

charges on traffic forwarded and received by the Milwaukee at Rockford, Illinois, 1915 to 1934?

A. Yes, sir.

Q. Is this document which I show you that study? (Handing paper to witness.)

A. It is.

Mr. Swaine: I ask that it be introduced as Debtor's
4674 Exhibit No. 87.

(DEBTOR'S EXHIBIT NO. 87, Witness Sparrow, received in evidence.)

The Witness: That is a statement of the total freight charges and the Milwaukee's proportion of revenues on traffic forwarded and received at Rockford for the period prior to the Milwaukee's acquisition of the Gary, 1915 to 1921, and for the years subsequent thereto, 1922 to 1934. This statement shows that with the acquisition of the Gary there was at once a substantial increase in the Milwaukee's business in and out of Rockford, its revenues increasing from $408,982 in 1921 to $751,724 in 1922. This increase, however, is not all additional business to the Milwaukee for the reason that prior to the acquisition of the Gary by the Milwaukee the Gary made all deliveries it could to the Milwaukee at Kirkland, thereby obtaining a greater revenue than it would receive from the switching rate. After the Milwaukee's acquisition, the operation to Kirkland was discontinued, and so the business the Milwaukee had been receiving at that point was received at and included in the Rockford earnings. Just how much business the Gary delivered to the Milwaukee at Kirkland is now impossible to determine as the records are not available. This, however, is not important as there is now no line from Rockford to Kirkland and the question,
therefore, resolves itself into what part of the Mil-
4675 waukee's proportion of the Rockford revenues from industries located on tracks served by the Gary it would lose if it lost the ownership of this property. I have no way of determining this as it would depend upon who acquired the property, what part of the total business in and out of these industries is competitive, and what part is local and to which road, and lastly, the influence of solicitation of other carriers and the benefits a shipper attaches to shipping over a railroad that serves the industry direct. The only thing that seems reasonably certain is that with loss of control of the Gary we would neither lose all the business or retain it all. I have for the purpose of this

study made the assumption that with loss of control we would lose 75 per cent of all of the business which originates and terminates on the Gary Railroad. Our Traffic Department with whom I have discussed the matter feels that this is quite an excessive amount.

Q. In other words, it is too favorable to the Gary?

A. That is what they think. I think it is quite favorable.

Q. On that basis, what do you estimate to be the Milwaukee net earnings, contributed by the Gary?

A. I will take it in steps.

Q. Instead of going into it in detail, as the data is on the schedule, just take the bottom figure.

4676 A. Before I get to that, there is the question of what part of these revenues on No. 87 come from Gary industries and get on to Exhibit No. 85.

Q. All right, explain it in your own way.

A. I do not wish to take up any more time than necessary, but I would like to make it clear.

Exhibit No. 87, previously introduced, shows the Milwaukee's proportion of the total freight revenues of the Rockford station in 1928 was $1,216,284, and in 1929, $1,441,307. An analysis of the business for the year 1928 showed that 30.2 per cent of the total Milwaukee revenues, or $367,855 in 1928, and using the same percentage, $432,391, in 1929, was from traffic originating or terminating on Gary tracks. In 1933, the revenues accruing to the Milwaukee from Rockford business were $570,411, and in 1934, $615,162. An analysis of this business for the year 1934 showed that 25.1 per cent of the total Milwaukee revenues, or $154,398 in 1934 and, using the same percentage, $142,603, in 1933, was from traffic originating and terminating on industries served by Gary tracks. These revenues to the Milwaukee from traffic originating or terminating on Gary tracks at Rockford are shown in the lower right-hand half of Exhibit 85; as are also the Milwaukee's revenues

4677 from business at other stations on the Gary, the larger part of which came from DeKalb, at which point is located the American Steel & Wire Company, and which were $162,004 in 1928, $134,275 in 1929, $78,567 in 1933, and $61,581 in 1934.

As further shown by Exhibit 85, on the basis of these revenues and the assumption of a 75 per cent loss in business with the loss of control of the Gary, we have System revenues contributed to the Milwaukee by the Gary of

$397,394 in 1928, $425,000 in 1929, $165,878 in 1933, and $161,984 in 1934. Applying to these revenues the System freight operating ratios as shown in the Exhibit, we have net earnings to the Milwaukee of $135,114 in 1928, $137,700 in 1929, $59,218 in 1933, and $51,187 in 1934.

The same exhibit No. 85 further shows in the lower right hand corner for the years 1928, 1929, 1933 and 1934 the combination of the net income of the Gary on the basis of cost to the Milwaukee of handling the bridge traffic and the estimated net earnings to the Milwaukee contributed by the Gary, which it is assumed would be lost to the Milwaukee if it lost the ownership and control of the Gary, which produces total estimated contribution by the Gary to Milwaukee System earnings of $129,927 in 1928, $145,210 in 1929, $25,218 in 1933, and a deficit of $32,813 in 1934.

Summarizing the foregoing, my conclusion is the Gary is not an earner by and of itself. It was running defi-
4678 cits prior to the acquisition of its control by the Milwaukee, and the only reason it did not show deficits in its accounts in subsequent years was due to the artificial revenues credited to it on the bridge traffic moved over it by the Milwaukee, principally Milwaukee company coal. For the reasons I have already given there would be no justification for allowing the Gary revenues at tariff rates on the movement of such business which the Milwaukee could and would, if it were a question of paying such tariff rates, move over its own lines via Bensenville at a lesser cost. On this bases and after making very liberal assumptions as to the net contributions to the Milwaukee System earnings by the Gary, as shown by Exhibit 85, it failed to earn anything toward its interest for the two years 1933 and 1934, and with the large volume of business which we had in the years 1928 and 1929, its contribution to system earnings was $129,927 in 1928 and $145,210 in 1929.

Q. Just stop on that. I do not think we need the rest of the material on the Gary. Turn now to the Terre Haute. You have already testified that the properties of the Chicago, Terre Haute & Southeastern are operated under a 999 year lease. Have you prepared a separate map showing in greater detail than the general map the properties of the
Terre Haute, and is the document which I hand to
4679 you that map? (Handing map to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 88.

(DEBTOR'S EXHIBIT NO. 88, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Will you please describe generally the character of the lines of the Terre Haute?

A. They extend from a point about one mile south of Chicago Heights to Westport, Indiana, a distance of 292 miles, making connections with the New York Central at Delmar, the Pennsylvania at Webster and Terre Haute, the Nickel Plate at Cheneyville and Humrick, the Wabash at Newell, the Baltimore and Ohio at West Dana and Seymour, and the Big Four at Terre Haute. The Terre Haute has trackage rights over the Baltimore & Ohio Chicago Terminal Railroad Company for about 12½ miles north of Chicago Heights to Blue Island, which is in the Chicago Switching District. The line serves the Clinton and Linton Districts of the Southern Indiana coal field. In recent years about 28 per cent of the coal mined in Southern Indiana has been mined on and moved out over the Terre Haute. This line also serves the well-known Bedford stone quarries.

Q. Will you please describe generally the term of lease.

A. By a lease agreement dated July 1, 1921, which 4680 was approved by the Interstate Commerce Commission, the Chicago, Milwaukee & St. Paul Railway Company leased the property of the Terre Haute for a period of 999 years. The Chicago, Milwaukee, St. Paul & Pacific Railroad Company, successor to Chicago, Milwaukee & St. Paul Railway Company, by resolution of its board of directors, February 14, 1928, assumed all the obligations of the lease.

Under the terms of the lease the lessee pays as rental to the lessor a sum equal to the corporate expenses of the lessor, but not exceeding $12,000 per annum (now running at about $10,600), and all interest on funded and unfunded debt which, as of June 30, 1935, and as shown on page five of the Plan of Reorganization of July 1, 1935, amounted to $1,023,580 annually. By further provisions of the lease the lessee during the period the lease shall be in effect assumes the obligation to pay the principal of all funded and unfunded debt. The funded debt outstanding in the hands of the public as of June 30, 1935, and as shown on page 5 of the Plan, aggregated $21,929,000.

Q. Just a moment, Mr. Sparrow. You said in effect they assumed the obligations to pay the principal on the funded and unfunded debt?

A. Assumed, as long as the lease shall be in effect.

Q. But the lease permits the extension of the
4681 funded or unfunded debt, does it not?

A. Yes, but if the lease were broken, we do not have to pay. It is during the period that the lease is in effect that it is an obligation.

Q. That is right, but the point I want to make is that the Milwaukee may extend the obligations under the lease, the obligations which are on the property now, when they mature, according to their terms?

A. Yes, sir. There is no unfunded debt. The lessee also agreed to observe all the covenants of the mortgages of the lessor, including the replacement of all equipment worn out, destroyed, or otherwise disposed of. The lessee further agreed to purchase at a price of $10 per share, when tendered and delivered, all the stock of Chicago, Terre Haute & Southeastern Railway. As of June 30, 1935, 40,471 shares have been purchased out of 41,730 shares outstanding.

Q. Is not that all that was purchased by the predecessor in title of this company?

A. Yes.

In this connection Terre Haute income bonds outstanding in the principal amount of $6,336,000 are entitled to one vote for each $100 principal, which gives the holders a voting power exceeding that of the stock.

Q. What is the total property investment and val
4682 uation of the Terre Haute property down to June 30, 1935?

A. The investment in road and equipment of the Terre Haute as of June 30, 1935, was $29,204,606. The Interstate Commerce Commission's final valuation as of June 30, 1916, of the property leased and used for common carrier purposes was $20,150,000. This valuation brought down to June 30, 1935, on the basis of the O'Fallon decision was $23,608,100.

Q. What did your examination of the earnings of the property prior to the lease show?

A. You have the period of Federal control again, which does not afford any indication of the earning power of the railroad, but a standard return, based on the average net railway operating income for the three years ending June 30, 1917, was $944,453, which was more than the full interest on funded debt, including income bonds, which for the year 1917, amounted to $870,610.

Q. Since the lease have separate accounts been kept?
A. No.
Q. Have you, however, made studies of the accounts of the Terre Haute to determine its separate earnings?
A. Yes, we kept up an almost continuous study from the time we acquired it down until some time in 1928.
Q. Were studies made during the previous reorganization proceeding and in the investigation by the I. C. C.?
4683 A. Yes.
Q. What did those studies show? First, let me introduce an exhibit, if you will, please. Have you prepared a statement or analysis of the revenues, expenses, and net income of the Terre Haute lines for 1925 and 1926, taken from exhibits introduced in the I. C. C. and Federal court examination of the Terre Haute lease on the last reorganization?
A. I have prepared such exhibit, and the figures were taken from the statements in our files.
Mr. Swaine: I offer that as Debtor's Exhibit No. 89, and also offer the map previously referred to as Debtor's Exhibit No. 88.
(DEBTOR'S EXHIBITS NOS. 88 and 89, Witness Sparrow, received in evidence.)
The Witness: This exhibit shows the net income available for fixed charges, leased rental and net income to the Milwaukee after rent, after allowing the Terre Haute a division of freight charges at tariff rates for transportation of Milwaukee Company coal, as follows:
Net income available for fixed charges, 1925—$3,399,133; and in 1926, $3,916,806. The lease rental in 1925 was $1,049,368; and in 1926, $1,039,521. The net income to Milwaukee after rental, 1925—$2,349,765; and in 1926—$2,877,285.
4684 Q. That excess, of course, passes into the general treasury of the Milwaukee, does it not?
A. Yes.
Q. And, as a practical matter, therefore, it is to be considered as perhaps operating as a credit on the cost of company freight which you had included in your income statement, and so applying it, what does it show as to the cost of carrying the company coal?
A. In 1925, the company coal transported was 2,721,512 tons, transported at a cost of 10 cents a ton; in 1926, 2,975,-

188 tons were transported at a cost of one-third of a cent a ton.

Q. If you had not carried this coal over the Terre Haute, how would you have carried it?

A. We might have moved it over the Terre Haute and the Chicago and Eastern Illinois, the same as before.

Q. If you had paid tariff rates, what would they have been?

A. They would have averaged 96½ cents in 1925.

Q. That is 96½ compared with 10?

A. Yes.

Q. And in 1926 how much?

A. 97 cents.

Q. As compared with one-third of a cent?

A. As compared with one-third of a cent.

In this connection for the twelve months prior to
4685 the lease of the Terre Haute the Milwaukee purchased 2,506,688 tons of company coal at various points on the Chicago & Eastern Illinois, Terre Haute, Illinois Central, Pennsylvania and other lines in Indiana and Illinois, on which it paid in freight charges to these roads a total of $2,970,425 which, if equated to rates prevailing in 1925, approximates $2,594,000.

Q. Have you made a study of the earnings of the Terre Haute property for the years 1933 and 1934?

A. Yes.

Mr. Swaine: I offer that as Debtor's Exhibit No. 90.

(DEBTOR'S EXHIBIT NO. 90, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Will you please explain the basis of that study?

A. In the limited time available it has not been possible to make as complete an analysis as was made for the years 1925 and 1926. In those years a complete analysis was made of every waybill in estimating the freight revenues. But it is believed that the results which were arrived at in the following manner, closely approximate the actual:

In the ascertainment of freight revenues, an analysis was made for two typical months, April and November, of all
4686 shipments, including Milwaukee company coal, originating, terminating or moving over the Terre Haute lines, from which the total freight charges and the Terre Haute's proportion thereof were determined. In dividing the revenues, other than revenues local to the

Terre Haute, the Terre Haute was given the same divisions as were in effect when it was a separately operated company. In certain cases where no published divisions were in effect with the Terre Haute, divisions were made on the basis of applicable divisions with the C. & E. I. The revenues on Milwaukee company coal were based on the practice in effect prior to the lease of the Terre Haute, when the Milwaukee had its coal billed to various points on its line beyond Chicago, enabling it to receive a favorable division of the through rate and thus pay less than the local rate to Chicago. The two months' freight revenues were then expanded to a full year on the following basis:

Reports are made to the states of the freight revenues earned within the state. In the State of Indiana the only mileage we have is the Terre Haute, so that the freight earnings for the State of Indiana are the earnings of the Terre Haute within that state. In making this report freight revenues on local movements within the state are assigned direct; on interline business the freight revenues within the state are determined by applying to the 4687 ton miles made within the state the revenue per ton mile of all interstate business of the Milwaukee system, exclusive of the State of Minnesota. We found the total freight revenue for the Terre Haute for the months of April and November for the two years 1933 and 1934 as determined by the direct analysis, was 2.72 times the total freight revenue for those two months within the State of Indiana, as included in the annual report to that state. The full year's freight revenues for the Terre Haute were then determined by applying this factor to the total freight revenue as reported to the State of Indiana for the year in the manner described. It was assumed and, I think, reasonably so, that the ratio of the total Terre Haute revenues to the revenues of that line in the State of Indiana for the full year would bear the same relationship as for the two months, April and November. Other revenues, such as passenger, mail and express, are local to the line and assignable direct.

As to expenses: The Terre Haute is a separately operated division, with the exception of 37.5 miles of the Gary from Delmar to Joliet. We, therefore, have a record of its maintenance of way and transportation expenses, after clearing from the division records those expenses applicable to 37.5 miles of the Gary line. The further explanation

should be made that the lines of the Terre Haute, in-
4688 cluding its trackage rights over the B. & O. C. T., end at Blue Island. As a separately operated railroad, the Terre Haute would absorb the switching charge over the Indiana Harbor Belt on all business northbound for delivery at Chicago or points beyond; on business coming to it from Chicago or other points it would also absorb the switching charge, except on cars on which the foreign line enjoyed a road haul including return of empties received loaded from the Terre Haute for road haul. As the Milwaukee has trackage rights over the Indiana Harbor Belt in connection with the operation of the Terre Haute and Terre Haute trains run through to Bensenville, we have included in the Terre Haute's operating expenses all the train costs and the Indiana Harbor Belt trackage charge, but have given it credit on a cost basis for all cars moving in road haul from the Milwaukee to the Terre Haute, including return of empties received loaded from the Terre Haute for road haul.

As to maintenance of equipment expenses: Repairs to locomotives in use on the Terre Haute were allocated direct; freight car repairs were determined by applying to Terre Haute owned cars the Milwaukee's average repair costs per car.

Equipment Rents: Freight car rental was deter-
4689 mined on the basis of ownership as if the Terre Haute was a separately operated railroad, that is to say, it received the standard per diem credit for its owned cars when off its lines and the per diem charge on all foreign cars, including Milwaukee cars, while on its lines, except excess Milwaukee-owned coal cars.

Our Superintendent of Transportation, after a study of the situation, advised that, taking into consideration the return empty movement and the time for cleaning, repairing and distributing cars to the mines, the Terre Haute would be amply provided if, on the average, it had on its lines four empties for each car loaded and, therefore, in charging the Terre Haute for per diem on Milwaukee cars we excluded all empty coal cars in excess of that ratio.

Rental for private cars was on the basis of private car mileage made on the Terre Haute lines.

As to rent for locomotives: The Terre Haute owns five modern passenger locomotives in use on the Milwaukee. Nearly all the freight locomotives in use on the Terre Haute

are Milwaukee-owned locomotives. As we have charged the Terre Haute for repairs and depreciation on the locomotives it uses, the rental charge was made on the basis of the tractive effort pounds of the locomotives assigned to the Terre Haute in excess of its ownership, charging 5 per cent on the depreciated cost new of the excess
4690 tractive effort pounds.

A further word of explanation should be given as to equipment rents. As has already been mentioned, the lease agreement requires the Milwaukee to observe all the covenants of the Terre Haute mortgages which specifically require the replacement of all equipment worn out, destroyed, or otherwise disposed of, with equipment of equal capacity, that is to say, if six cars having a total carrying capacity of 240 tons were retired, they must be replaced with cars having a total carrying capacity of not less than 240 tons, and similarly, locomotives retired must be replaced with locomotives having an equal total tractive effort, regardless of whether the cost is more or less than the original cost of the cars or locomotives replaced. The Milwaukee has not fulfilled this obligation of the lease, the ownership on July 1, 1921 and June 30, 1935, of the Terre Haute's equipment is as follows:

On July 1, 1921, the Terre Haute owned 70 locomotives, on June 30, 1935, it had 28 left. On July 1, 1921, its ownership of freight cars was 6500. That had been reduced on June 30, 1935, to 3,121. Passenger cars, it had on July 1, 1921, 75, reduced to 5 on June 30, 1935. Work equipment, July 1, 1921, 152 units and June 30, 1935, 75 units.

The estimated—and I say "estimated" because you
4691 have to estimate the cost of replacing with new equipment, the capacity of the equipment retired—but the estimated mortgage replacement value of this equipment, the obligation of the Milwaukee, is $5,030,598.

In considering equipment rents, the question arose as to whether the Terre Haute should be charged rental on all Milwaukee cars used by it, or whether it should receive a credit on account of cars which the Milwaukee under its lease agreement was obligated to replace but had not. As a matter of fairness, it would seem that the Terre Haute should receive such a credit and that the Milwaukee should not profit to the extent of a rental charge on its equipment as a consequence of not having fulfilled its obligations under the lease. However, as this is a division of earnings as be-

tween bondholders, and as the bondholders did not incur the obligation under the lease, I finally decided to determine the rent on the basis of present ownership of equipment. Had the Milwaukee fulfilled its obligation and replaced this equipment, the net income of the Terre Haute would have been increased $162,798 in 1933 and $199,696 in 1934.

Q. It is true, is it not, Mr. Sparrow, that if the waivers contemplated by the plan in respect of those equipment vacancies were not made effective, failure to provide this equipment would constitute a default under the lease

4692 lease and permit the termination of the lease, and therefore deprive the Milwaukee of the earnings?

A. Any default under Terre Haute earnings is a default under the lease.

Q. On the basis which you have outlined, does the document which I now hand you show the estimate of the net income of the Terre Haute leasehold property available for fixed charges and the net income to the Milwaukee after rental, for the years 1933 and 1934? (Handing document to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as DEBTOR'S EXHIBIT NO. 90.

Q. (By Mr. Swaine.) In order to have it in the body of the record, will you please state just the summary figures, the last three figures?

A. Net income available for fixed charges, $2,962,012 in 1933, and $2,826,892 in 1934, and with a net income to the Milwaukee, after rental, of $1,925,892 in 1933, and $1,792,760 in 1934.

Q. During those years how much coal did the Terre Haute transport for the Milwaukee?

A. The average of the two years was $1,618,600 tons.

Q. If you apply foreign freight charges to that, what would the carriage of the coal have cost the Milwaukee?

A. $1,702,913.

Q. The figures which you have given do not take

4693 into account, do they, revenue accruing to the Milwaukee on commercial traffic interchanged between it and the Terre Haute?

A. No, there are other benefits to the Milwaukee.

Q. Will you explain to the Commission some of the other benefits to the Milwaukee arising from the lease?

A. The foregoing figures do not take into account the

revenues accruing to the Milwaukee on commercial traffic interchanged between it and the Terre Haute. As all of this business, other than commercial coal originating on the Terre Haute, would probably be received by the Milwaukee at Chicago, if it did not have the Terre Haute, there is little, if any, gain to the Milwaukee on account of such business. As to commercial coal originating on the Terre Haute and moving to points on or beyond Milwaukee lines north and west of Chicago, it is not plain that all of this business would be lost if the Milwaukee did not have the Terre Haute, but unquestionably much of it would. Consumers on Milwaukee lines at competitive points might well obtain their supply from Southern Illinois or other fields and be served direct by lines serving those fields. In addition, there is an undoubted advantage in having the mine and consumer on the lines of your own railroad, and while it is not possible to determine what part of this revenue would be lost with the discontinuance of the Terre
4694 Haute lease, it has taken a number of years to build up this business and our Traffic Department is of the opinion the loss would be substantial.

The tons moved and revenue accruing to the Milwaukee on this business for the years 1933 and 1934 are as follows: Tons of coal moved, 1933, 422,948 tons, in 1934, 489,387 tons. The Milwaukee's division of revenues from that tonnage in 1933 was $755,459, and in 1934, $813,319.

Now there is a further advantage to the Milwaukee through the lease of the Terre Haute, in that coal to a railroad is as essential as is food supply to an army. Just as an army, for its safety and success, desires its lines of communication to be under its own control, so a railroad desires its coal supply to be located on its own rails and under its own control. Because prior to the lease of the Terre Haute it was not in this position the Milwaukee Railroad found it necessary to maintain on its lines a larger supply of coal on cars than it now does, which, of course, adds to the expense of operating a railroad.

With a supply of good coal located on its own lines it has the coal producer and the coal consumer served by its own rails and is able to provide for an adequate supply of coal cars and their prompt movement, thereby insur-
4695 ing a continuous and sufficient supply of coal for its own use, as well as its patrons, and by such services not only improves its own operation but develops its com-

mercial traffic. In addition, other advantages are uniformity in the quality of coal used on its engines, permitting a large number of locomotives to be adjusted for economical coal consumption.

The operating performance on the Terre Haute shows up very well. 1933 showed a decline of 19.78 per cent in gross ton miles, as compared with the average of the two years 1925 and 1926, but there was a decrease in transportation expenses, as compared with the average of these two years, of 52 per cent. Train loading increased from an average of 2,253 tons to 3.019 tons, or 34 per cent. In 1934, gross ton miles showed a decrease of 16.5 per cent; transportation expenses, a decrease of 50 per cent, and train loading increased to 3,153 tons, or 40 per cent.

From my study of the situation, I believe the Terre Haute lines are earning the rental and that the benefits to the Milwaukee, direct and indirect, are greatly in excess of such rental. For these reasons I believe the lease should be continued with the provisions of that lease, which would leave the Terre Haute bonds undisturbed as provided
4696 for in the Plan of Reorganization.

Q. Mr. Sparrow, have you caused to be prepared a map showing the lines of railroad on which the first and refunding mortgage is a first lien, the 50-year 5 per cent mortgage a second lien, and the adjustment mortgage a third lien, apart from the general mortgage map?

A. Yes, sir.

Q. Is the document which I show you that document? (Handing document to witness.)

A. Yes, sir.

Mr. Swaine: I offer it as Debtor's Exhibit No. 91.

(DEBTOR'S EXHIBIT NO. 91, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Now, will you describe very briefly the lines upon which this mortgage is a first lien, the first and refunding mortgage, I mean?

A. They comprise 3,435 miles of road, 2,860 miles of which are west of the Missouri River and include—

Q. That is the Puget Sound extension, is it?

A. Yes, sir, that is the Puget Sound extension—and include all of that mileage, with the exception of the line from Bellingham to Glacier, Washington, and its branches, totaling 67 miles, which is subject to a first lien of $301,
000 of Bellingham Bay & British Columbia Railroad
4697 5 per cent first mortgage bonds, owned by the Mil-

waukee and pledged as part collateral securing loans from Reconstruction Finance Corporation and the Railroad Credit Corporation, and the line extending from Chamberlain to Rapid City, South Dakota, 219 miles, on which the general mortgage is a first lien.

The lines west, on which the first and refunding mortgage is a first lien, commerce at the Missouri River, serving North Dakota and South Dakota, which in normal periods are heavy grain-producing states, providing a long haul for the railroad; thence through Montana, reaching practically all the important cities of that state and serving a large agricultural and livestock districts, and are so situated as to participate in the transportation of products of mines, both coal and metal; thence across the northern part of Idaho and through the state of Washington, serving Spokane on the east and Seattle, Tacoma, Everett, Bellingham and Port Angeles on the west, as well as Pacific Coast harbors at Raymond, Aberdeen and Hoquiam. These lines reach the great timber resources of the states of Idaho and Washington, serving many important lumber manufacturing plants, and have complete terminal facilities at their Pacific Coast ports for interchange of business with 4698 water lines. The Milwaukee has the short line to Puget Sound points from Chicago, the Twin Cities and Spokane, 665 miles of which are electrically operated over the Cascade and Rocky Mountains.

Of the 575 miles east of the River, the First and Refunding Mortgage is a first lien on about 40 miles of the main line from Mobridge to Bowdle, South Dakota; 76.3 miles of the main line to Kansas City, between Muscatine and Rutledge, Iowa, and 15.1 miles of the main Kansas City freight line, between Ashdale and Ebner, Illinois. These are essential parts of through lines carrying diversified traffic between major gateways. The remaining 443.6 miles constitute secondary main and branch lines which are good feeders to the System.

Q. How many bonds are outstanding under the first and refunding?

A. $9,866,000, of which six million dollars are pledged as part collateral, securing loans from Reconstruction Finance Corporation and the Railroad Credit Corporation; $2,665,000 are pledged to secure a loan from the Public Works Administration; $258,000 are pledged with the trustee under equipment trust, series M, and $943,000 are in the treasury of the company.

Q. In order to get the picture a little clearer, with reference to the provisions of the plan as to mort-
4699 gages covering these properties, the 50-year mortgage, which is a second lien upon those properties, has outstanding about $106,000,000?

A. $106,000,000.

Q. And the adjustment mortgage bonds, which is the third lien?

A. $182,000,000, without back interest, $182,000,000 principal amount of bonds.

Q. Now, to get the other side of the picture, as you have already testified, those mortgages are also junior liens in that same order on the properties on which the general mortgage is the first lien, are they not?

A. That is correct.

Q. What is the property investment and valuation of the properties on which the first and refunding mortgage is the first lien?

A. The Milwaukee's investment as of June 30, 1935, was approximately $252,000,000. The Interstate Commerce Commission's final valuation of all the property used for common carrier purposes, brought down to June 30, 1935, $218,528,000.

Q. What is the position of this mortgage as to equipment?

A. Based on an opinion of counsel, as contained in a memorandum of May 21, 1932, and as far as we are able to determine from our records, in accordance with the
4700 principle laid down in that memorandum, the only equipment on which the first and refunding mortgage, as of June 30, 1931 and June 30, 1935, was a first lien, is as follows:

	June 30, 1931	June 30, 1935
Electric Locomotives	63	59
Steam Locomotives	92	55
Work Equipment	24	24
Floating Equipment	8	6

I might perhaps explain that while there were 59 electric locomotives on June 30, 1935, as compared with 63 on June 30, 1931, it is not that there have been locomotives retired, but there have been combinations of three-unit motors made. In other words, we might have had these two-unit locomotives and converted them and added on

another unit and making the motor three-unit instead of two.

Q. You do not keep separate accounts for these things, do you?

A. No.

Q. Have you endeavored to segregate the earnings to show whether or not the earnings of the first and refunding, first lien properties, appear at a point in system earnings before general mortgage bond interest has been fully earned?

4701 A. Yes.

Q. The significance of that, so as to get the point, is that under the plan the general mortgage gets two-thirds of its interest as fixed interest, and then gets one-third as contingent interest ahead of the payment of any interest on the 50-year bonds?

A. That is right.

Mr. Swaine: The first and refunding bonds, however, are all pledged to secure R. F. C., P. W. A. and R. C. C. obligations which continue as fixed interest obligations, and the study that Mr. Sparrow is about to explain is for the purpose of testing the propriety of that arrangement of application of earnings between those obligations.

Q. (By Mr. Swaine.) Will you please state to the Commission the method which you pursued in making this segregation or estimate?

A. Before doing that, I want to give a little statement about what analysis was made earlier.

Q. All right.

A. The last reorganization. A thorough analysis of the earnings of the lines west of the river has not been made since the last reorganization, and we have never had occasion to make any analysis of the lines east of the river on which the first and refunding mortgage is a first lien. The study made in the last reorganization and

4702 introduced in the proceedings before the Federal Court was for the years 1923, 1924, 1925 and 1926, and showed average annual system revenues for those years of $162,638,482 and net income of $19,564,627 available for fixed charges including Terre Haute rental as such, dividing $14,800,636 to Lines East and $4,763,991 to Lines West.

In arriving at these figures the revenue division to Lines West was on a mileage pro rate, adjusted by applying to it the same differential as exists between a mileage pro rate and the division allowed to western lines on Minne-

sota Transfer. Adjustment was also made for the company material hauled by Lines West for Lines East and by Lines East for Lines West. Owing to the different conditions, not only as to gross revenues, but also to the fact that these studies were for the Lines West of the River only, which at that time had a larger quantity of equipment on which the Puget Sound mortgage was a first lien than is now subject to the first lien of the first and refunding mortgage, they are of no assistance in the present problem, which is to determine whether, at the time the system earnings are sufficient to pay full general mortgage bond interest and all other fixed charges under the plan, any of these earnings are derived from the
4703 lines on which the first and refunding mortgage is a first lien.

As a test of this we have taken the year 1931, in which year the system revenues were $111,423,772, and net income of $10,263,185 available for fixed charges including Terre Haute rental as such, which is in excess of the full general mortgage bond interest and other fixed interest under the Plan. If, therefore, in this year the lines under the first and refunding mortgage show no earnings, it would seem to be conclusive proof that no part of the full general mortgage bond interest or other fixed interest under the Plan will be paid out of earnings of the lines on which the first and refunding mortgage is a first lien.

We could not, in the limited time available, make as thorough an analysis as was made for the years 1923, 1924, 1925 and 1926, but with the information developed in the analysis for these years, our state reports and division operating expenses and statistics, we have been able to build up a reasonably accurate division of revenues, expenses and net income. I will now describe as briefly as possible the methods used.

Freight Revenues: Annual reports are made to each state showing revenues and expenses of the lines within the state. These revenues are allocated direct in the case of local business moving wholly within the state. On
4704 interstate business the revenue is obtained by applying to the total interstate ton miles in that state the System interstate ton mile revenue, exclusive of the State of Minnesota. The System ton mile revenue will vary from the actual ton mile revenue of any particular state for the reason that in some states the commodities transported carry a lower rate than in others and the average length

of haul is not the same, both of which, of course, affect the revenue per net ton mile.

In our study for the earlier years we determined from an analysis of the waybills for the four months, April, July, October and December, 1925, the total freight revenues of the lines West of the River, dividing the revenues on business interchanged at Mobridge on a mileage prorate. Deducting from these total revenues the wholly intrastate revenues, we were then left with the total interstate revenues for the Lines West of the River. Comparing these total interstate revenues with the total interstate revenues as included in the reports to the States west of the River, including that portion of North Dakota and South Dakota lying west of the River, disclosed that the interstate revenues as included in the State reports were 16 per cent too high. A check just completed for the two months, April and October, 1931, shows a percentage
4705 of 15.7 per cent. The freight revenues for the year 1931 were determined by taking 84 per cent of the total interstate freight revenues as included in the State reports, splitting North Dakota and South Dakota on the basis of net ton miles made east and west of the River. To that part of this revenue from business interchanged with Lines East was added the differential that the division on Minnesota Transfer is over a mileage prorate on that point. To this sum was then added the total intrastate revenues as included in the State reports, again splitting North Dakota and South Dakota on the basis of net ton miles made east and west of the River.

Passenger Revenues: In the study for the years 1923 to 1926, revenue from passengers local to Lines West was assigned direct, and revenue from passengers passing through Mobridge was apportioned on a mileage prorate. The revenues so obtained compared very closely with the revenues as included in the State reports, differing about 1 per cent. For 1931 we have, therefore, used the passenger revenues as included in the State reports reduced 1 per cent, dividing North Dakota and South Dakota on the basis of the passenger train car miles, exclusive of mail, express and baggage cars.

Mail Revenues: In the earlier years special studies were made by the Superintendent of Mail and Ex-
4706 press, which disclosed the mail revenues as included in the State reports were 5 per cent too high. We, therefore, took 95 per cent of these State revenues as included in the State reports.

Express Revenues: These are reported by groups. The Mountain Pacific Group includes all lines west of the Montana-Dakota State Line and west of Chicago. The Lines West revenues are, the Mountain Pacific Group revenues, plus that portion of the Western Group lying between the Montana-Dakota State Line and the Missouri River, which was determined by taking the percentage of the total revenues the percentage that the mileage made by cars carrying express between the Montana-Dakota State Line and the Missouri River was of the total mileage made by all express cars in the Western Group.

All Other Revenues: These are taken from State reports.

Operating Expenses: The Lines West comprise the Coast, Rocky Mountain and Trans-Missouri Divisions of the Milwaukee System. Therefore, all that was necessary in the ascertainment of Maintenance of Way and Structures and Transportation Expenses was to take the total of these expenses for those divisions, which include a prorate of common to system charges. In arriving at Maintenance of Equipment Expenses the figures used
4707 in our Division operating sheets were taken, i. e., the locomotive repairs are the actual repairs made to locomotives used on the lines West. Freight and passenger train car repairs are the average system repair costs per mile applied to the mileage made by each class of equipment on the Lines West. Depreciation on both locomotives and cars is the Lines West proportion of system charges based on its ratio of locomotive and car miles to the total locomotive and car miles of the System.

Traffic Expenses and General Expenses: All of these expenses are a common to system charge and were apportioned between the Lines East and the Lines West on combined train miles and yard switching locomotive miles of terminal divisions only.

Miscellaneous Operations Expenses: These were allocated direct, except dining and buffet service expense, which is apportioned on dining car miles.

Taxes: Actual as accrued and reported in the state reports, dividing North Dakota and South Dakota on the basis of miles of road East and West of the River, except that Washington taxes were increased approximately $90,000 as a result of the settlement made with the State in 1934 affecting this and other years' taxes that were in litigation.

4708 Equipment Rent: As a charge has already been made in Maintenance of Equipment for repairs and depreciation on System equipment in use on the Lines West, and as taxes also cover that equipment, the rental charge on this equipment has been confined to an interest charge on the depreciated value of the equipment used, exclusive of that equipment on which the first and refunding mortgage is a first lien. Payments for private car mileage were apportioned on the basis of the private car mileage made west of the River. In arriving at the rental for freight cars, the average number of foreign cars in use on Lines West, for which the regular per diem charge of $1.00 was made, was determined from the regular count of all cars on line made on the 1st and 15th day of each month. This count also showed that the average number of System cars in use daily on Lines West was 10,599 cars. This was reduced to 7,000 cars on advice of our Superintendent of Transportation, after a study of the situation, that there were at least 3,600 System cars stored on Lines West which, in his opinion, were not necessary for the handling of the Lines West business in the year 1931. The depreciated value of the 7,000 cars was estimated at $7,000,000, on which a rental charge of 5 per cent, or $350,000, was made.

4709 Locomotives: A rental charge was made for locomotives as follows: The tractive effort pounds of the locomotives assigned to the Lines West, exclusive of these locomotives on which the first and refunding mortgage is a first lien, was 2,036,193 pounds. The estimated depreciated cost new of this tractive effort was $1,628,955, to which 5 per cent was applied, giving a rental charge of $81,448.

Passenger Train Cars: A rental charge of 6 mills per car mile was made for system-owned passenger train cars in use on the Lines West to cover interest on the depreciated value of the equipment. On the Pullman-owned observation cars rented by the Milwaukee, a charge of 4 cents per car mile was made, which is the charge made by the Pullman Company.

Work Equipment: A rental charge was made against the Lines West on an apportionment of an amount equal to 5 per cent on the depreciated system investment in work equipment in the proportion that the Lines West Maintenance of Way and Structures Expenses was of the total Maintenance of Way and Structures Expenses of the Sys-

tem for that year, with credit to Lines West for the depreciated investment in work equipment on which the first and refunding mortgage is a first lien.

Joint Facility Rents: Actual.

So far I have dealt with the Lines West of the Missouri
4710 River. As to the Lines East of the River on which the first and refunding mortgage is a first lien; it would take several months to determine the earnings accruing to these lines from the business moving over them as determined by an analysis of the waybills and freight charges. In the time available, approximations only can be made of those earnings.

As a result of a number of detailed studies that have been made of branch lines on different parts of the System, we found that the revenues to a branch line on a mileage prorate division with a 25 per cent minimum was a certain percentage of the total station earnings of the branch. (For selected branch lines representative of the branch lines here involved this percentage ranged from 17.5 per cent to 24.75 per cent). Freight revenues of each of these branch lines, with the exception of the ore traffic on the Kelso-Iron River Branch, were determined by applying to the total station earnings of the branch the percentage, determined in the studies of branch lines above referred to, of a branch line located in the same territory and as nearly similar as possible to the branch line in question. For the ore business originating on the Kelso-Iron River Branch, and moving from Kelso to Channing over the line subject to the lien of the Milwaukee & Northern mortgages,
4711 and from Channing to Escanaba under trackage arrangement with the E&LS, there was credited the ore revenues less the expense of handling.

For the connecting links and through lines, such as the section of line from Muscatine to Rutledge, Ashdale to Ebner, and Libertyville to Janesville, the freight revenues were determined by multiplying the net ton miles of the section for four months expanded to a year by the System average revenue per net ton mile.

Passenger Revenues: We have reports from our ticket auditor of the train mile earnings of the trains passing over these sections, and these were applied to the train miles made on the sections in question. In the case of expenses: Maintenance of Way expenses again were estimates furnished by our Engineering Department. Train operating expenses were determined by multiplying the

train miles on the sections by the train operating expenses per train mile of the Division of which the section formed a part. Station expenses were determined from four months actual expanded to a year. The only practical way of estimating equipment rental that occurred to us for such cases was to determine the ratio that the total of interest at 5 per cent on the depreciated book value, repairs and depreciation on System equipment was of the total System revenues, and apply this ratio to the total
4712 revenues estimated for these sections. Joint Facility Rents are as paid on these sections of lines.

Taxes again were an apportionment of state taxes made by the Tax Commissioner.

As to Other Income Net: The lines on which the first and refunding mortgage is a first lien were credited and debited on an actual basis, determined as accurately as possible in the time available. This included $233,381 of income received from securities pledged under the first and refunding mortgage.

Q. Based upon that study, is the document which I hand you a computation of the earnings of the lines upon which the first and refunding mortgage is a first lien, exclusive of the Terre Haute lease, for 1931? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as Debtor's Exhibit No. 92.

(DEBTOR'S EXHIBIT NO. 92, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) In order to have the conclusion stated in the record, will you state the figure at the bottom, showing what was the result for 1931 of the study?

A. The income available for interest of all of the lines subject to first and refunding mortgage was a deficit of $422,427.

4713 Q. And that was the year in which the System had earnings available for interest of how much?

A. $10,263,185.

Q. In that period the lines east of the river, that is, what you might call the general mortgage lines, did obtain, however, some benefit from traffic originating or terminating on lines west, did they not?

A. Yes.

Q. What is your estimate of the amount of those earnings?

A. You mean revenues?

Q. Revenues.
A. $5,839,764.
Q. Now, have you made a similar study for 1930?
A. Yes.
Q. That was the year in which the system as a whole earned how much applicable to fixed charges?
A. $18,992,367.
Q. Is the statement which I hand you a detailed statement of the estimate for that year? (Handing paper to witness.)
A. Yes, sir.
Mr. Swaine: I offer it as Debtor's Exhibit No. 93.
(DEBTOR'S EXHIBIT NO. 93, Witness Sparrow, received in evidence.)
Q. (By Mr. Swaine.) For the sake of having it in
4714 the record at this time, what was the amount earned toward the interest on the bonds on these properties?
A. $2,326,721.
Q. That again is exclusive of excess income on the Terre Haute, is it not?
A. That is true.
Q. Now, if you had included the Terre Haute earnings, what would the properties upon which the first and refunding mortgage was a first lien have shown in those years?
A. In the year 1931, the line subject to the first and refunding mortgage, as shown by exhibit No. 92, had a deficit of $422,427, or in round figures, $500,000, after deducting credit to income of interest on Terre Haute bonds pledged with the trustee of the first and refunding mortgage.
As an analysis of Terre Haute earnings has not been made for the year 1931, I am assuming for this illustration that the net after rental would have been at least $2,000,000, as the net income to the Milwaukee after rent from the Terre Haute operations.
On this basis the net income for all property subject to the first and refunding mortgage, including this leasehold interest, would have been approximately $1,500,000.
After deducting interest on the outstanding amount
4715 of first and refunding bonds pledged as collateral, amounting to $535,000, would leave approximately $1,000,000 available for the 5s of 1975.
Q. Before going further, that indicates, does it not, that the earnings which are to be used under the plan to

pay the interest on the R. F. C. and the R. C. C. notes in effect comes from the excess earnings of the Terre Haute lease?

A. I think that is a proper conclusion.

Q. Now, what does it show as to the position of the 50-year 5's? How much would be left for them on this 1931 basis? I think you just testified to it.

A. $1,000,000. If this is deducted from the $10,263,185 available for fixed charges in the 1931, only $9,263,000 would be available to meet full interest, including contingent interest on general mortgage bonds, of about $9,400,000.

Q. Now, the conclusion from that is that it is a very close point at which the general mortgage bond interest is fully earned, including contingent, and that at which the 50-year bonds frequently earn something. Is not that right?

A. It is quite a close question.

Q. It is somewhere right in the vicinity of full earnings on the general mortgage bonds, that the 50-year 4716 bonds begin to earn anything?

A. Yes, sir.

Q. Assuming, however, that in this estimate you have been over-generous to the general mortgage bonds and that if your studies could be made more carefully on a longer period of time, they would have shown some earlier point at which the general mortgage bonds, I mean the 50-year mortgage bonds might begin to earn interest, the general mortgage bonds at that point not having earned full interest, what would you say as to the propriety, from the standpoint of the 50-year mortgage bonds, of defaulting the general mortgage bond interest in order that the 50-year mortgage bonds might get the benefit of that margin of earnings?

A. I think it would be a disastrous thing for the holders of the 5's of 1975, to do.

Q. Why do you think that?

A. I think that the general mortgage bondholders in those conditions might well foreclose.

Q. And if they did?

A. And if they did foreclose on their property, there would be no value to them in continuing the Terre Haute lease, if all the earnings from the Terre Haute lease were to be turned over to the property, preceding the property

subject to the lien of the first and refunding mortgage
4717 Although, in this estimate of these earnings, equipment rents, as I have just explained, were an apportionment on actual expenses of repairs and depreciation, plus a 5 per cent interest, and depreciated value, and were not a regular per diem charge made on the Milwaukee equipment used on the lines west, but if these properties were separated and the general mortgage foreclosed, there would be a higher rental for that equipment. We made it that way to start with, which would have decreased the net about $250,000 if you had made it strictly on what a foreign road would charge the other road for the use of its equipment.

Q. Then there are two points to be made here: If the general mortgage foreclosed and cut out the benefit as between the Terre Haute lease on the east and the lines on the west, on which the first and refunding mortgage was a first lien, as a matter of fact, the first and refunding mortgage would lose the benefit of the excess earnings of the Terre Haute lease?

A. Yes, sir.

Q. That is, it could not operate the leased properties under those circumstances?

A. It could not operate it.

Q. It would not tie up?

A. No.

4718 Q. In the second place, it is your best judgment that under those circumstances the equipment charges against the lines west would be greater by a substantial amount than the amounts which you have figured?

A. Yes, sir, because if it were a separate railroad, it would be on the regular per diem basis.

Q. Therefore, it is a justifiable conclusion, is it not, that the general mortgage bonds are entitled to be paid their interest in full in an allocation of the system income before anything is paid upon the 50-year mortgage bonds?

A. I think it is the sound thing to do.

Q. You think it is very definitely in the interest of the 50-year bonds?

A. I do.

Director Sweet: The hearing will now be in recess until 9:30 o'clock tomorrow morning.

Mr. Hoffman: If your Honor please, may I ask a question? I am not familiar with the practice before this Commission, and I am wondering whether the day is set down

with respect to each class of bonds, or whether they are all taken together, in order that those who are interested in specific classes of bonds, interested in a specific class of bonds such as the Milwaukee & Northern, will not have to be here the whole hearing?

4719 Mr. Swaine: May I give you something in that regard? I expect to finish this witness in less than an hour tomorrow morning, when he will be available for cross examination by any interested class of bondholders.

Mr. Hoffman: Will there be other witnesses?

Mr. Swaine: There will be one other witness, and I will probably finish with him in two hours, so that, so far as our case is concerned, we will probably finish by the noon recess.

Mr. Hoffman: Will you give me the papers the witness was reading from?

Mr. Swaine: The memorandum notes?

Mr. Hoffman: The memorandum notes as affecting the Milwaukee & Northern.

Mr. Swaine: As affecting the Milwaukee & Northern?

Mr. Hoffman: That is the only thing we are interested in.

(Whereupon, at 4 o'clock p. m., the hearing was adjourned until 9:30 o'clock tomorrow morning, Tuesday, August 6, 1935.)

4721 Hearing Room B, I. C. C. Building,
Washington, D. C.,
Tuesday, August 6, 1935.

The hearing was resumed at 9:30 o'clock a. m., pursuant to adjournment.

Before:

Commissioner Porter, Director Oliver E. Sweet, Bureau of Finance, and Examiners R. T. Boyden and J. V. Walsh.

Appearances:

Same as heretofore noted.

4723 PROCEEDINGS.

Director Sweet: We will proceed, gentlemen.

WILLIAM W. K. SPARROW. testified further as follows:

Direct Examination (Continued.)

Mr. Swaine: Will you please resume the stand, Mr. Sparrow.

Director Sweet: Yesterday morning petitions for leave to intervene were presented and copies distributed. I should like to ask now, gentlemen, if there is any objection to allowing petitions for leave to intervene presented by Mr. Hoffman, Mr. Murphy, Mr. Abrams and Mr. Burgess?

Mr. Swaine: There is no objection to any of them. I think it ought to appear in the record that I am advised by Mr. Dynes, who appears as counsel in the reorganization proceeding in Chicago, that Mr. Abrams was in error in stating to the Commission that he had been given leave to intervene in the court proceeding. I do not think that that bears on his right to intervene here, and no objection is made.

Mr. Burgess: In connection with the intervening petition that I filed on behalf of a group of insurance companies and fiduciary institutions, there should be listed

among that group the New England Mutual Life Insurance Company of Boston, Massachusetts.

4724 Director Sweet: Those petitions for leave to intervene are granted.

I would like to ask Mr. Sunderland and Mr. Shearer if they have filed their written petitions?

Mr. Swaine: Neither one of them appears to be here.

Director Sweet: Were copies distributed to counsel by those gentlemen?

Mr. Swaine: I do not think so.

Director Sweet: We will pass those for the present. Was a written petition presented by Mr. Jones and copies distributed on behalf of the Union Pacific?

Mr. Burgess: I did not get one.

Mr. Swaine: We were supplied with a copy, and make no objection.

Director Sweet: No objection to it?

Mr. Swaine: No objection to it.

Director Sweet: That may be granted also. You may proceed, Mr. Swaine.

Q. (By Mr. Swaine.) Mr. Sparrow, in the opening statement yesterday you will remember that I said that one of the problems which the Board of Directors of the debtor had had under consideration for the last several years was the problem of equipment vacancies. For the record, will you again state the provisions of the mortgage which make that problem a real problem in the financial

4725 affairs of the company?

A. All of our new mortgages are first and refunding, with like provisions, five of 1975 and the adjustment mortgage requiring equipment to be replaced, that is, worn out and destroyed, with equipment having a value equal to the depreciated book value of January 1, 1929, less in the case of equipment under equipment trusts outstanding, equipment obligations as of that date.

That is as to the Milwaukee's mortgages. As to the leased lines of the Terre Haute, the replacement covenant in those mortgages is that the equipment shall be replaced with equipment of equal capacity.

Q. Have you prepared a statement showing the amount of the equipment vacancies under the first and refunding, 50-year and adjustment mortgages as of June 30, 1935?

A. I have.

Q. Is this paper which I hand you that statement? (Handing document to witness.)

A. It is, yes, sir.

Q. State the total amount, not the detail, but the total amount.

A. The replacement value of vacancies, June 30, 1935, of Milwaukee equipment, $13,994,174.

Mr. Swaine: That is offered as Debtor's Exhibit No. 94.

4726 (DEBTOR'S EXHIBIT NO. 94, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Was the condition of the equipment on that date such that large additional amounts were expected to become vacant over the next year or two?

A. Yes, ordinarily we have retired a great deal of equipment during the last few years, but we will be retiring equipment, I should think, at the rate of about 2,000 freight cars a year.

Q. And it was expected by 1937, was it not, that that would get up to what figure? Have you made a calculation of it?

A. I have forgotten the figure as of 1937.

Q. The ultimate figure by the time you scrap all the equipment that is now marked for break-down in the reasonably near future?

A. I do not recollect the figure of what it was, Mr. Swaine. It ran in several million dollars.

Q. How much?

A. Several million dollars.

Q. It was considerably more than that. My recollection is it was up over $20,000,000.

A. With what we already had.

Q. That is right.

A. Yes.

4727 Q. So that the vacancies which would have to be filled would be well over $20,000,000 within a very few years?

A. Yes.

Q. And at the present level of traffic, or the level of traffic which could be reasonably assumed over the next few years, does the company need that equipment?

A. No.

Q. Have you similarly prepared a statement of the esti-

mated replacement value of equipment vacated under the Terre Haute mortgage as of June 30, 1935?

A. Yes, sir.

Q. Is the document which is handed to you that statement? (Handing paper to witness.)

A. Yes, that is the statement.

Q. And the total amount as of that date?

A. June 30, 1935, replacement of equipment vacated under Terre Haute mortgage, $5,030,598

Mr. Swaine: That is offered as Debtor's Exhibit No. 95.

(DEBTOR'S EXHIBIT NO. 95, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Is it contemplatel within the comparatively near future there will be additional equipment retired under the Terre Haute mortgages?

A. Yes.

4728 Q. Do you remember offhand the amount of that?

A. Well, in the next ten years it will be about four million dollars replacement value of equipment.

Q. To tie up the record at this point, what have you done in the plan to meet this particular problem?

A. Of the Terre Haute?

Q. Both the Terre Haute and the Milwaukee.

A. As to the Milwaukee, the vacancies that are now not filled, that is, to be cancelled, the defaults are to be waived. As to the future, the company is to provide sufficient equipment to adequately handle the business and to have the right to purchase such equipment under equipment trust obligations.

Q. As to the Terre Haute, how does the plan meet the problem?

A. The defaults as of June 30, 1935, are also waived, and as to vacancies subsequent to that date, we have ten years in which to make them good.

Q. And similarly a right to buy equipment under equipment obligations?

A. Yes, sir.

Q. In each case for equipment obligations not to exceed 80 per cent of the purchase price?

A. Yes, sir.

Q. Have you prepared an application of the plan
4729 of reorganization to an assumed amount of railway operating revenues projected over a series of years?

A. Yes, sir.

Q. Does that purport to be a forecast of earnings?

A. No, sir.

Q. I show you this document and ask you whether that is the study to which I have referred? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: That is offered as Debtor's Exhibit No. 96.

(DEBTOR'S EXHIBIT NO. 96, Witness Sparrow, received in evidence.)

Q. (By Mr. Swaine.) Will you please, in your own way, Mr. Sparrow, explain this chart to the Commission?

Director Sweet: Before going further with it, Mr. Swaine, I would like to have a statement of your theory of the value of an exhibit of that sort, of a study of that sort, where I understand you merely assume that certain earnings will be earned.

Mr. Swaine: He will state the basis of that assumption.

Director Sweet: What is the value of it?

Mr. Swaine: The value of it is that if earnings reach those amounts—and he will state what he thinks are the possibilities of the earnings reaching those amounts,
4730 and the conditions under which they will reach those amounts—then this shows what will happen. I say it is not a forecast. All I mean to say is that he does not assume to say that all these things are going to happen. I think most of the so-called forecasts that we have seen over the past several years have failed to materialize, but here is a study and these figures were not just pulled down out of the blue, and the witness will tell you why he took the figures, and what he believes are the conditions under which the figures can be obtained, and what will happen by applying the plan to the figures.

Director Sweet: If this witness were making a forecast, I could see a good deal of value to it because of its familiarity with the property and familiarity with the territory in which it operates, and because of his knowledge of the possibilities and conditions of the property, and that sort of thing.

Mr. Swaine: I think what he will say about this will show that he has done what the expert, who says he is making a forecast, usually does.

Director Sweet: He is just a little modest in the way he characterizes it?

Mr. Swaine: I think it is a little more than modesty. He simply does not want to be in the position of guaranteeing or staking his professional reputation, that those
4731 earnings are going to be realized, because there are so many unknown factors in this situation, which we do not want the witness to represent, and which we do not want to represent that we have any assurance that these earnings are going to be obtained, as a lot of those factors are within the power of the Commission itself. But assuming various situations which the witness will explain, this is what would happen.

Director Sweet: Proceed.

The Witness: In the introduction to the Plan the statement is made that the soundness of the resulting capital structure will necessarily be determined by the earning capacity of the property in the future.

The purpose of this exhibit is to show the gross revenues necessary for the successful operation of the Plan, but in submitting it I would like to have it understood that I am not undertaking to forecast the future earnings of the property because, in my opinion, under present conditions with so many unknown quantities, it is not possible to do so. Of course, there has to be some reason for using the figures shown in the exhibit, and the Commission should know why the particular figures and not some other figures, were used.

The best I am able to do is to take past earnings, modify them for such known charges as have taken place,
4732 and make assumptions that seem reasonable, if the railroads are to continue as a private enterprise supported by private capital.

With a statement of these assumptions, an explanation of the expenses for the gross revenues used, and the net results of operation under the proposed plan, the Commission will be in a position to make such modifications as it may seem proper.

The broad assumptions made in respect of gross earnings used for this illustration are:

(1) That the United States will emerge from the depression with a volume of business as great as the average of the 14-year period, 1921 to 1934, and with the growth of the country that volume will be exceeded.

(2) That owing to competing forms of transportation, the future average of railroad freight earnings, exclusive

of increase in population, will be less than it was in the 14-year period, 1921 to 1934. Competition from other forms of transportation began to be a factor after the termination of the World War, and has been increasing since. Therefore, the average earnings of this 14-year period reflect to a considerable extent future losses in revenues to the railroads as a result of this competition. The extent to
4733 which future losses will exceed the average of the past 14-year period depends upon the transportation policy of the country and the ability of the railroads to improve the methods of meeting the competition of other forms of transportation. The railroads are finding ways of holding business to the rails, and there is not reason to believe they have exhausted the possibilities in this direction. The principal factor, however, is whether the present chaotic policy of a transportation system, one part of which is subjected to rigorous regulation, and the other part unregulated, is to continue, or whether the transportation system of the Nation is to be treated as a unit and subjected to uniform regulation.

In view of the report and recommendations of the Federal Coordinator of Transportation, and because of their obvious fairness and desirability in the public interest, it is assumed that legislation along the lines of such recommendations will be enacted. With regulation of all forms of transportation, some measure of Fourth Section Relief, and the efforts the railroads are making to recapture business, the assumption has been made in this illustration that the future average of railroad freight earnings, when we emerge from the depression, will not fall below the average of the 14-year period, 1921 to 1934, by more than 10 per cent.

(3) That while passenger travel can be attracted
4734 back to the rails by progressive methods, the volume will not equal that of the past. For this illustration the future average of passenger earnings has been taken as 50 per cent of the average of the 14-year period, 1921 to 1934.

Freight revenues for the last half of 1935 are placed at $41,700,000 which, if correct, will make the total for the year $76,232,000. This is increased each year until it reaches $100,000,000 in 1940, which compared with $110,130,000, the average of the 14-year period, 1921 to 1934, referred to hereafter as the "fourteen-year period."

Q. (By Mr. Swaine.) It also compares, does it not, Mr.

Sparrow, with $171,000,000 as the peak? Those are total operating revenues. Have you got your peak operating revenues there?

A. $137,161,000 in 1929 was the peak freight revenues.

Q. So that the 100 million dollars assumed for 1940 is approximately 30 per cent under the peak?

A. Yes.

Q. All right.

A. And to have the corresponding figure of the low, in 1932, it was $70,302,000.

Passenger revenue steps up from $6,000,000 in 1935 to $8,000,000 in 1940, which is a little less than 50 per
4735 cent of $16,404,000, the average of the fourteen-year period.

Total revenues in 1940 are $121,000,000, a reduction of about 15 per cent from the average of the fourteen-year period of $140,855,000.

As to expenses, maintenance of way: The estimated expenditures in 1935 are $16,976,000. $18,000,000 is provided for each of the subsequent years, 1936 to 1940. This is 14.9 per cent of the 1940 revenue of $121,000,000, and compares with the average expenditure for the fourteen-year period of $20,646,000, which was 14.7 per cent of the average revenues in the same period.

The expenditures in 1932 were $13,446,229; in 1933, $10,162,788, and in 1934, $12,851,519.

We have in the last ten years, by the application of treated ties, tie plates, heat treating rail ends to prevent batter, restoring battered ends to normal section by the welding process, improved organization and equipping track gangs with power tools such as tampers, adzing machines, belt tighteners, ballast spreaders, etc., greatly reduced our maintenance costs.

Bridge and building payrolls for the period 1923 to 1929, inclusive, were quite uniform, varying from $2,127,801 low
in 1924 to $2,521,219 high in 1928. In 1930, they were
4736 $1,851,446; in 1931, $1,369,181; in 1932, $1,044,693; in 1933, $634,461 and in 1934, $920,558.

With the exception of the year 1933, the amount of bridge work done in 1930 and subsequent years was not substantially less than in the years 1923 to 1929, and although there has been a curtailment in building work, I attribute a substantial part of the reductions made since 1929 to greater efficiency and organization in the handling of this class of work.

The estimate of $18,000,000 was arrived at after consultation with Mr. Penfield, our chief engineer. This amount will permit of the laying of 30,000 tons of new rail, 3,250,000 cross ties, 70 per cent of which will be treated, and the application of 20,000 tons of tie plate each year. It is our opinion that under this program the property will be adequately maintained for the volume of traffic indicated by the gross revenue.

As to maintenance of equipment: Our maintenance of equipment expenses will be substantially less than in the past, as we have retired practically all of our wooden equipment. Since 1926, we have discontinued the practice of making heavy expenditures, constituting a practical rebuilding of our older units of equipment—cars and locomotives. In addition, in 1930, we built a modern car repair shop at Milwaukee, at a cost of $1,000,000, where we have concentrated our car repair work as far as possible.
4737 Similarly, we have concentrated our locomotive repair work in a few major shops and since 1928 have spent $600,000 equipping them with modern machinery.

Our estimated maintenance expenditures, exclusive of depreciation, for the given revenues were arrived at after consultation with our Superintendents of Car and Motive Departments. They are based upon a percentage of the gross revenues, which has ranged from 14.1 per cent in 1928 to 12.3 per cent in 1934. This compares with 14.3 per cent and 11.5 per cent, respectively, for the Burlington; 15.6 per cent and 14.1 per cent for the North Western, including Omaha; 11.1 per cent and 11.7 per cent for the Great Northern, and 14.4 per cent and 15.1 per cent for the Northern Pacific. In this illustration we have estimated the maintenance expenditures for the given revenues as 13.5 per cent of those revenues. Depreciation charges were arrived at by applying the present rates as filed with the Interstate Commerce Commission, in compliance with its order of July 28, 1931, to the estimated equipment investment.

As to transportation expenses: These are based upon a study of past performance modified to present conditions. The average ratio in the period 1923 to 1934, inclusive,
which eliminates 1921 and 1922, when wages and rates
4738 were unsettled, was 37.5 per cent. This total transportation ratio was greatly influenced by the ratio for passenger service. The average freight revenue for the

years 1930 and 1931 was $103,515,000, compared with $100,000,000 shown in the exhibit for 1940. In these two years, when the present rates of pay were in effect, the average freight transportation ratio was slightly below 34 per cent. Using this transportation ratio for freight service, and taking the passenger transportation expenses of 1934, adjusted for increase in wages to the basis of wages now in effect, we arrive at a transportation ratio of 35.9 per cent for 1940. The transportation ratios for the earlier years with smaller gross revenues are necessarily higher and are:

1936	38.4
1937	37.9
1938	37.3
1939	36.7

General expenses, railway tax accruals and joint facility rents are based largely on past experience and require no special explanation, except to make it clear that no provision is made in general expenses for pension contributions similar to those provided for under the recent Railroad Retirement Act, which has been declared unconstitutional by the United States Supreme Court.

4739 Equipment Rents: It is difficult to make an estimate of equipment rents which fluctuate and do not seem to bear any direct relationship to gross revenues. Since 1926 our maximum net debit for hire of equipment was $3,993,000 in 1929. In 1930, with a decrease in freight revenues of approximately $22,000,000, the net debit was $2,065,000, but in 1934, with freight revenues of $42,000,000 less than in 1930, the net debit showed an increase of over $600,000. Our net hire of equipment is much influenced by the payments for private car mileage. In 1934, payments for this private car mileage amounted to $2,939,000, about the same as in 1928, when the freight revenues were about 85 per cent larger. We have assumed approximately the same equipment rents in 1936 as in 1934, and have also assumed that the payments for private car mileage in 1940 will be $3,000,000, and with the decrease in ownership of equipment, debits and credits for freight car per diem would offset. In 1930, they resulted in a credit of $1,200,000, and in 1934, $348,000.

Other income net, ranging from $1,200,000 in 1936 to $1,300,000 in 1940, is based on other income net for the period 1930 to 1934, after taking out Terre Haute rental, interest on unfunded debt and any other abnormal items

considered peculiar to those years. I think the figures
4740 are conservative.

On the basis of these revenues, expenses and income items, the income available for fixed charges, as shown by Line 19 of the exhibit, is: For the last half of 1935, $2,254,000; for 1936, $6,074,000; for 1937, $8,903,000; for 1938, $11,577,000; for 1939, $14,446,000, and for 1940, $17,790,000. Fixed charges, (Line 32), which include interest on one-half the amount of the new R. F. C. loan from January 1, 1936, and also interest on new equipment trusts as shown are: For the last half of 1935, $3,605,857; for 1936, $7,555,328; for 1937, $7,574,134; for 1938, $7,522,608; for 1939, $7,417,625, and for 1940, $7,314,917. With these revenues, expenses and fixed charges the company would, as shown by Line 33 of the exhibit, have a deficit after fixed charges for the last half of 1935 of $1,351,857, and a deficit for 1936 of $1,481,328, and would have available net income, as defined under the Plan, of $1,328,866 in 1937, $4,054,392 in 1938, $7,028,375 in 1939 and $10,475,083 in 1940. Under the provisions of the Plan, with these earnings the general mortgage interest would become a fixed charge from 1941, raising the fixed charges of $7,314,917, as shown for 1940, to $9,299,002.

The disposition of available net income, under the provisions of the Plan, is: For general mortgage contin-
4741 gent interest, (Line 34), $1,328,866 in 1937; $4,054,392 in 1938; $3,545,125 in 1939 and $1,984,085 in 1940. For Capital Fund, (Line 35), nothing in the years 1936, 1937 and 1938 and $3,483,250 in 1939, and the maximum amount allowed under the Plan of $5,000,000 in 1940. In 1940, in accordance with the provisions of the Plan, $729,800 is applied to the purchase of extended equipment obligations, leaving $2,761,198 in that year for payment of interest on the 50-year 5 per cent bonds of 1975 and the Gary bonds, the total annual interest on which is $5,469,755.

The bottom half of the exhibit shows these operations reduced to a cash basis. This shows that if we start out on July 1, 1935, with $16,000,000, made up of cash on hand June 30, 1935, of $4,000,000 and $12,000,000 R. F. C. commitment, the cash after all disbursements, interest, principal payments on equipment, and additions and betterments drops to a low of $9,594,798 at the end of 1938, and builds up again to $12,543,107 at the end of 1940, the net result being that at the end of the five and one-half years

the cash has been decreased $3,456,893. During the same period the company has made expenditures for additions and betterments, including initial payments on new equipment, of $29,940,000, and has reduced its equipment trust debt $16,586,758.

4742 As another illustration, we have taken the 1930 freight revenues of $115,700,000 and other revenues associated with freight of $4,500,000, and the 1931 passenger revenues of $9,000,000 and other revenues associated with passenger of $7,800,000, or a total of all revenues of $137,000,000.

Operating expenses require little explanation. With the increased volume of business, Maintenance of Way expenses are increased from $18,000,000 to $19,000,000. For Maintenance of Equipment expenses the same ratio of 13½ per cent of the total revenues is used, increasing these expenses, exclusive of depreciation, from $16,300,000 to $18,500,000. Depreciation is increased from $6,000,000 to $6,200,000 account estimated increase in investment. Transportation and general expenses are increased proportionately to the increase in revenues, as are also Joint Facility Rents. Equipment rents are held at the same level as for 1940 because of increased ownership of equipment over that year. Taxes are increased to $10,000,000 to provide for income tax and general tax increase. Other income for the year 1930, after taking out rental for leased lines and interest on unfunded debt, in accordance with the modified accounting rules of the Interstate Commerce Commission, effective May, 1935, was $3,038,000. This is reduced to $1,400,000 by eliminating abnormal items

4743 such as interest on demand and time loans, interest on Milwaukee Land Company note and special dividend on Indiana Harbor Belt stock.

With these revenues, expenses and income items, the Income Available for Fixed Charges, as shown by Line 19 of the exhibit, is $21,870,000, and Net Available Income (Line 33), $12,045,488. The following disposition is made of available net income, in accordance with the provisions of the Plan; Capital Fund, $5,000,000; redemption of extended equipment obligations, $729,800; 5 per cent interest on Milwaukee 50-year bonds of 1975 and Gary bonds, $5,469,755; sinking fund, $84,593, and dividends or other corporate purposes, $761,340.

The cash statement shows (Line 42), cash from operations of $29,070,000, disposed of as follows: Interest and

rent for leased road, $15,294,267; Equipment Trust Payments, $6,929,800, including initial payments of 25 per cent on new equipment; principal payments on loan from Public Works Administration, $290,000; Additions and Betterments, $5,710,000, and appropriation for sinking fund and dividends for other corporate purposes, $845,933.

From this exhibit there can also be developed the gross revenues, measured by freight revenues, required to pay, (a) Fixed Charges; (b) Fixed Charges and Capital
4744 Fund requirements; (c) Fixed Charges, Capital Fund and Contingent Interest, and (d) Fixed Charges, Capital Fund, Contingent Interest, Sinking Fund and full dividends on stock. The reason for expressing the gross revenues in terms of freight revenue is that on account of the great drop in passenger revenues total revenues of the past are not a good guide. To earn fixed charges during the period in which one-third of the general mortgage bond interest is contingent (about $7,500,000) requires freight revenues of $85,000,000, with total revenues of about $102,000,000. This freight revenue has been earned eleven times in the past fourteen years but, of course, with larger gross revenues than the $102,000,000, as used in this exhibit. To earn fixed charges when full general mortgage bond interest becomes a fixed charge (about $9,500,000) requires freight revenues of $87,000,000, with total revenues of about $104,000,000. This freight revenue has also been earned eleven times in the past fourteen years. To earn fixed charges, contingent interest on general mortgage bonds and a $5,000,000 capital fund (about $14,500,000) requires freight revenues of $95,000,000, with total revenues of about $115,000,000. This freight revenue has been earned ten times in the past fourteen years. To earn fixed charges, contingent interest on general mortgage bonds,
$5,000,000 capital fund, and full interest on the Gary
4745 bonds and 50-year 5's of 1975 (about $20,000,000) requires freight revenues of $114,000,000, with total revenues of about $135,000,000. This amount of freight revenue has been earned nine times in the past fourteen years.

It can be further deduced that to earn all interest charges, the maximum amount allowed under the Plan for capital fund and sinking fund, $5,500,000, and full dividends on the preferred stock (about $32,000,000) would require freight revenues of $136,000,000, with a total revenue of

$166,000,000. This amount of freight revenue has been earned twice in the past fourteen years—in 1928 and 1929.

I think, Mr. Swaine, this generally explains the exhibit and the operation of the Plan with the gross revenues as shown.

Mr. Swaine: I wonder if the Director would like to ask any questions on that.

Director Sweet: I think we will defer and questions on that for the present.

Q. (By Mr. Swaine.) Mr. Sparrow, in your discussion of this application of the plan to these assumed earnings, you mentioned several times the new R. F. C. loans. In my opening statement yesterday, I neglected to explain the proposed arrangement with the R. F. C. Will you
4746 state what the proposed commitment of the R. F. C. is to be?

A. The R. F. C. is to provide 12 million dollars as required, if and when required, and there are to be pledged first and refunding bonds of the company, as may be decided by the Commission and agreed upon with the Reconstruction Finance Corporation.

Q. At what rate and for what time is that money to be provided?

A. That is to be determined by the Interstate Commerce Commission. We have not fixed the rate.

Q. The new notes are 4 per cent?

A. The interest rate?

Q. That is right.

A. 4 per cent.

Q. And the notes are for ten years. Is not that correct?

A. Yes, sir.

Mr. Swaine: The Commission will note that on page 13 of the plan there has been left a blank, which it is presumed the Commission will fill in before any plan is submitted to the security holders, because the rate at which first and refunding bonds are required to be pledged for these R. F. C. notes certainly would be a material factor affecting the judgment of security holders as to whether they wanted the plan.

Q. (By Mr. Swaine.) Now, in addition to the 12
4747 million dollars committed on notes, it is proposed that the R. F. C. shall commit itself in what manner with respect to equipment obligations?

A. 80 per cent of 15 million dollars.

Q. Which means $12,000,000?
A. Yes, sir.
Q. Again, on a 4 per cent basis?
A. Yes, sir.
Q. And it is by 15 annual installments?
A. Yes, sir.

Examiner Boyden: Mr. Sparrow, was your estimated total revenues for the years 1936 to 1940, based in any way on an analysis of the various commodities carried, or is it just an outside estimate?

The Witness: That is a general estimate, as I have explained, on past experience. It is not an analysis made on what the future commodities may be as compared with the past.

Examiner Boyden: Have you a statement there of the ratio of maintenance of way and structure expenditures to total revenues for the years 1921 to 1934, each year?

The Witness: I think I can give them. The average was 14.7 per cent. I think I can give them to you for quite a few years.

In 1923, the ratio was 13.6 per cent; in 1924, the 4748 ratio was 14.2 per cent; in 1925—13.7 per cent; in 1926—15 per cent; in 1927—17.2 per cent; in 1928—16.1 per cent; in 1929—16.3 per cent; in 1930—15.7 per cent; in 1931—15.3 per cent; in 1932—15.8 per cent; in 1933—11.9 per cent; and in 1934—14.6 per cent.

Examiner Boyden: Now, this $18,000,000 which you have used here for maintenance of way and structure expenditures for each of the years 1936 to 1940, is what percentage of the revenues in each of the years?

The Witness: I have not worked it out for each year. In 1940, it was practically 14.9 per cent.

Q. (By Mr. Swaine.) What provision have you made for additions and betterments in this study?
A. $5,000,000 a year.
Q. Is that adequate?
A. Well, in the eleven years, 1924 to 1934, our average expenditures for additions and betterments to road proper has been six million odd dollars, practically six million dollars. Now, while we have provided for five million dollars out of available net income for additions and betterments, there is a charge to expenses, to operating expenses, account of road property retired and replaced.

This has averaged in the past about one million dollars

a year. So if we have the necessary earnings, we not
4749 only have the five million dollars that we are allowed to take out of the available net income, as provided for under the plan, but we have that one million dollars in cash, that is, representing no outlay, but has been charged to expenses as a deduction in arriving at the available net.

Q. And you have made such a deduction in this study?

A. Yes, sir. If you will look at line 41 of this statement, you will see "Add equipment depreciation and road retirement charges deducted in operating expenses," and if you compare that figure with the depreciation figure, line 7, you will see it is one million dollars more.

Q. You said a minute ago that you had provided only five million dollars. You have, in addition to that, provided the proceeds of the sale of equipment obligations of the R. F. C.?

A. Yes, sir, that five million dollars is outside of equipment. We have the equipment trust obligations provided there, and while in the earlier years we have robbed the depreciation fund, depreciation reserve and equipment to get that five million dollars, when you arrive at the year 1940, you will see that practically all of the depreciation is applied to equipment, either in the payment of the existing trusts or in retiring the extended obligations and in the initial payment on new equipment.

4750 Q. So that your additions and betterments, under this plan, over the period of the study were provided, first, by the proceeds of the 12 million dollars of notes of the R. F. C. in excess of the deficits on fixed charges for the first two years, which are less than the aggregate of three million dollars, thus leaving you there nine million dollars, the proceeds of the 12 million dollars of equipment obligations to be sold to the R. F. C., the amount which may be available from the capital fund, which in this first 5½ years you develop only 8½ million dollars in the aggregate, and the depreciation funds which you have mentioned?

A. Yes, sir.

Q. After 1940, you feel it is reasonable to expect that you will have available the entire five million dollar fund, do you not?

A. I hope so, and I think that is reasonably assured.

Q. I have heard the statement made that this plan makes no provision at all for financing. What do you think of that statement, for financing additions and betterments?

A. I do not think that statement is a correct statement. To start with, just as you have already explained, one of the provisions that we all recognized was essential was to provide a reasonable amount out of earnings for
4751 additions and betterments, and not start right out by selling more bonds and building up the fixed charges again.

Q. In other words, it was a deliberate purpose of the plan not to make it too easy to finance additions and betterments out of the issue of additional debt, but to require their financing, to a considerable degree, out of income?

A. That was the purpose.

Q. And that is, to a degree, at the expense of the 50-year 5 per cent bonds?

A. Yes, sir.

Q. And everything junior to those bonds?

A. Yes, sir. We do have a financing medium, if we have earnings, in the first and refunding mortgage. It is perfectly true that it does not permit of financing through the sale of junior securities or stock, but if you have earnings and it is necessary to do any financing in addition to the amount of money we take out of earnings, the first and refunding mortgage is available. The only way you could get another financing medium that would be through a junior security would be to wipe out all the present stock and all the adjustment bonds.

Now, if the earnings are not considered in the future to be adequate to make the first and refunding as
4752 an adequate financing medium, then the only other alternative would be to issue a new mortgage ahead of the general mortgage, and that would not be considered a practicable thing to do by any of us who have discussed it with the holders of the general mortgage bonds.

Q. Going back to your analysis of the point at which the interests on the various tiers of the capital structure will be earned, would you say that with total revenues of approximately $35,000,000, the first and refunding bonds ought to be available as a financing medium, at a reasonable rate?

A. Total revenues of what figure?

Q. Around $35,000,000.

A. Yes, sir, I should say they ought to be.

Q. Because at that point full interest will be earned on the Gary's and the 50-year 5's, which are junior to them?

A. Yes, sir, and, in addition to that, you would have taken out five million dollars for the capital fund.

Q. Taken out five million dollars for the capital fund already?

A. Yes, sir.

Q. As you pointed out, that gross has been earned nine times in the past fourteen years?

A. Yes, sir.

Director Sweet: As I understand it, Mr. Sparrow,
4753 you have assumed here for these 5½ years, that the carrier will operate practically the existing plant, with some changes in equipment?

The Witness: Yes, sir.

Director Sweet: But, so far as the road and the structures are concerned, you have not assumed that there will be any change, any increases or reductions in track mileage, road mileage, or anything of that kind?

The Witness: I have not taken that into consideration. There might be a few branch line mileages, I would say, retired, but I have considered, as you state, Mr. Director, that it is the same plant.

Director Sweet: Would you consider it desirable or not, in connection with a forecast or an estimate of this sort, that serious consideration be given to the question of the necessity of continuing to operate certain portions of the line?

The Witness: Do you mean through coordinations or consolidations with other carriers?

Director Sweet: If this carrier is to continue to operate its property independently, as it is now, do you think that some study and consideration ought to be given to the question of whether or not there is excess mileage which ought to be abandoned?

The Witness: We have been doing that right along,
4754 Mr. Director, and we have made studies of many of our branch lines. We have abandoned a number, but the great majority of them show that while the branch line itself, considered by itself, is not earning expenses, that the amount that it feeds into the system, with the system haul on it, justifies the continuance of the operation on those branch lines.

We have abandoned a considerable amount of double track mileage, which Mr. Scandrett is going to testify to,

and I will not go into that. But we have been doing that right along.

Director Sweet: Have you given consideration to what you may have to do in that regard over the next five or ten years in making up this statement?

The Witness: No, sir, nothing further than just continuing the policy which we have. I have not taken into consideration the possibility of consolidations with other carriers or terminal consolidations, or what economies might be effected in that manner.

Director Sweet: I have in mind some arrangements that were made by the Milwaukee and the Northern Pacific Railroads for joint operation of portions of their line.

The Witness: Yes, sir. They did it between Chehalis and Dryad. The economies were not large, about $16,000.

We did it between St. Regis and Haugen, with the
4755 Northern Pacific. We ran into considerable difficulties in those efforts to give up our line and use the other man's line or to use our line and give up the other man's line because of mortgage provisions. We have tried to work out something with the North Western and have run up against the provisions of the mortgages.

Mr. Swaine: In that connection the plan contemplates that those provisions of the mortgage shall be modified in the way you are speaking about, does it not?

The Witness: It was all right so far as we were concerned, but you run into the difficulties with other companies.

Director Sweet: Have you given consideration to the possibilities of anything like that, say, for ten years, in making this statement?

The Witness: No, sir, whatever we get in that respect will be that much more to the good. We will be that much better off if we make economies in that direction.

Director Sweet: What will happen if the property of the reorganized company fails by any substantial amount to earn the gross revenues or the net which you show on this exhibit?

The Witness: Of course, we have some margin, as I have shown, with the 12 million dollar loan from the R. F.

C., that we would follow down in 1938 and reduce that
4756 cash to 9½ million dollars. We still would have some margin of leeway if the earnings did not materialize as shown in this exhibit. But, of course, the answer to

your question is, if you did not have the earnings, the plan won't stand up. If you cannot earn enough to pay 7½ million dollars fixed charges on your railroad, I do not think there is any use coming before the Commission with any plan. My own personal opinion is that under those conditions, in a few more years there won't be any private railroads. We will have to go to the government and ask them to take us.

Director Sweet: It might be possible that the property could earn $4,000,000 or $5,000,000 instead of $7,000,000. If that were possible, what is the objection to a plan which would contemplate such an earning available?

The Witness: If we are limited, if that should happen to be the case, and it developed that the Milwaukee Railroad can only earn four or five million dollars—I am just giving you my opinion—I suppose if I were a large holder of mortgage bonds, I would feel like foreclosing my property, but the only alternative to such a plan would be to convert the general mortgage bonds into stock. If you are limited to four million dollars, there would not be enough money to pay any interest on general mortgage bonds.

4757 Director Sweet: The witness will be available so that we can ask him additional questions about this exhibit, if we desire to do so?

Mr. Swaine: Yes, sir. That concludes the debtor's direct examination of this witness, and he is available for cross-examination by any of the intervenors.

Cross-Examination.

Q. (By Mr. Hoffman.) May I ask the witness a few questions, Mr. Director?

Director Sweet: You may proceed.

Q. (By Mr. Hoffman.) Mr. Sparrow, yesterday in testifying with respect to the Milwaukee & Northern properties, you had before you a typewritten statement, of which you have supplied me with a copy. Will you please refer to that typewritten statement so that we may proceed in an orderly fashion?

A. Yes, sir.

Q. On page 1 of that typewritten statement you say: "The property of the Milwaukee & Northern Railroad Company was acquired by the Chicago, Milwaukee & St.

Paul Railway Company"—that is the old St. Paul road—"by deed dated June 26, 1893, for the sum of $6,157,850 paid in the stock of Milwaukee & Northern Railroad Company at par which had previously been acquired by Chicago Milwaukee, & St. Paul Railway."

4758 When had the Chicago, Milwaukee & St. Paul Railway acquired the stock of the Milwaukee & Northern?

A. I suppose some time prior to that date. I really cannot answer the question. That is what our records show and what was asked for in developing the corporate history in the valuation. I have not been into that to find out when it acquired it.

Q. But some substantial time before 1893?

A. I do not know how long before.

Q. What price, according to your records, was paid for this $6,157,850 of stock of the Milwaukee & Northern road?

A. I do not know. I have not got those figures with me.

Q. Are those figures available?

A. I expect they are. Our comptroller can tell me that.

Q. Is he in the room?

A. He is in the room. I do not know whether they are available or not.

Q. Will you ask him now?

Mr. Swaine: We can get it and supply it, but we have not it here.

Q. (By Mr. Hoffman.) That represented all the stock of the Milwaukee & Northern, did it not?

A. To the best of my knowledge it did.

Q. What proceedings were taken with respect to the corporate structure of the Milwaukee & Northern

4759 when its railway properties were paid for in stock?

A. I do not understand that question.

Q. Did the Milwaukee & Northern continue as a corporate entity?

A. I do not know how long it did. It went out of business some time after, but I do not know when. I have not gone into that.

Q. When you say it went out of business I wish you would state what occurred.

A. The corporation ceased to have any corporate existence.

Q. Did they file any dissolution papers?

A. I do not know. I could not tell you.

Q. When the property was transferred in effect the old Milwaukee road, which had previously been the sole stockholder of the Milwaukee & Northern became the holder of the Milwaukee & Northern, is that correct?

A. That is my understanding.

Q. So that in substance the same stockholders who owned the Milwaukee & Northern before the conveyance of the property owned the property after the conveyance of the property. Is that correct?

A. They owned the stock, and they turned the stock in and acquired the property by deed. That is my understanding of it.

Q. Except that they had to remove the bar of an
4760 intermediate corporate entity, the same stockholders beneficially owned the Milwaukee & Northern road as had owned it prior to the purchase of the old Milwaukee road? Is that right?

A. I suppose that is correct.

Q. What do your records show?

A. They show just what I have stated; that the Chicago, Milwaukee & St. Paul Railway Company acquired the Milwaukee & Northern property by a deed June 26, 1893, for which they turned in the stock that they owned, having a par value of $6,157,850.

Q. Turned in the stock to whom?

A. I suppose they cancelled the stock.

Q. You do not know?

A. I do not know.

Q. On page 2 of your statement in the first full paragraph, the second sentence you say:

"By agreement dated May 31, 1913, between Chicago, Milwaukee & St. Paul Railway Company and Farmers Loan & Trust Company of New York, successor trustee under Milwaukee & Northern mortgages, Chicago, Milwaukee & St. Paul Railway Company assumed the obligation to pay the interest and principal of Milwaukee & Northern Railroad Company first and consolidated mortgage bonds," and so forth. Will you please explain to the Commission
4761 the significance of the word "assumed" as used by you in the statement?

A. I just want to correct your statement. I think you said May 31, 1931.

Q. It is May, 1913.

A. Yes, sir. I did not qualify as a lawyer, but I under-

stand now that when a company enters into an agreement to assume an obligation of another company, it makes itself liable for the payment of the sum so assumed, whether it be principal or interest. Does that answer your question?

Q. Go ahead.

A. That is all.

Q. Are you finished with your answer?

A. Yes, sir.

Q. So that then I understand your answer in substance to be that you understand the word "assumed," as used by you, is an agreement to pay the principal and interest?

A. And make yourself liable for any deficiency, if there was one.

Q. But an agreement to pay the principal and interest?

A. That is what I would understand it to be.

Q. This statement, of course, was prepared by you?

A. It was.

Q. And this represents your testimony?

A. Yes.

4762 Q. And you used this word advisedly?

A. I did.

Q. Further along in the same statement and on the same page, the following statement appears: "On January 14, 1928, Chicago, Milwaukee & St. Paul Railway Company"—that is the old St. Paul Company?

A. Yes.

Q. (Continuing reading.) —"was succeeded through foreclosure and sale by Chicago, Milwaukee, St. Paul & Pacific Company"—the debtor here?

A. Yes, sir.

Q. (Continuing.) —"which, while continuing to pay interest on the bonds as they became due, did not assume the obligation to pay interest and principal."

By that you mean that they did not agree to pay principal or interest on the Milwaukee & Northern bonds? Am I correct on that?

A. They did not enter into any binding agreement or make an assumption as to that principal and interest.

Q. Did they enter into an agreement that was not binding, to assume the principal and interest?

A. I do not understand they entered into any agreement at all.

Q. Did they enter into any agreement at all?

A. I do not understand they did. They acquired
4763 the property through foreclosure.

Q. Pursuant to the plan of reorganization?

A. I suppose so.

Q. Do you know?

A. I take it that they must have. They acquired the property through the foreclosure.

Q. Did you not testify to the making of the deed yesterday?

A. Which deed?

Q. The deed which was offered in evidence and which you identified and testified to.

A. Yes.

Q. That deed was given pursuant to the foreclosure?

A. Yes.

Q. And pursuant to the plan of reorganization? Is that correct?

A. That is correct.

Q. Now you say there was no binding agreement to pay the interest and principal on these Milwaukee & Northern bonds in connection with this 1928 foreclosure sale and purchase? Is that correct?

A. I think it is, as I understand your question. Of course, we acquired that property through foreclosure. If we did not pay the interest and principal, there would be a default under the mortgage, and the bondholders could
foreclose, but they would have no claim against the
4764 Chicago, Milwaukee, St. Paul & Pacific Railroad Company, if that is what you mean.

Q. That is exactly what I mean.

A. Then that answers that.

Q. I show you a document, on the face of which appears the words "1928, first annual report of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company for the year ended December 31, 1928," and ask you whether you have ever seen that document or its counterpart? (Handing paper to witness.)

A. I have, many times.

Q. Does this document represent a true and correct copy of the 1928 report of the Chicago, Milwaukee, St. Paul & Pacific road, the new road?

A. Yes, sir.

Mr. Hoffman: I offer it in evidence with leave to withdraw it. I have only the one copy, and I assume there are copies with the Commission.

Mr. Swaine: We are going to put copies in evidence ourselves, and you can retain that copy.

Mr. Hoffman: Mr. Director, if it is any easier for Mr. Swaine or the witness, it might be numbered separately.

Mr. Swaine: It is going to be our exhibit No. 97, anyway.

4765 Q. (By Mr. Hoffman.) I call your attention to page 17 of the 1928 report of the Milwaukee road, and ask you whether this document was submitted by order of the Board of Directors of the road?

A. Whether this report was submitted to the Board of Directors?

Q. Whether this report was submitted to the Board of Directors.

A. Yes, sir.

Q. Now, I call your attention to page 7 of this report, under the heading, "Funded debt unmatured," and would like to have you read into the record the first full paragraph, slowly and loudly.

A. "In connection with the acquisition of the property of Chicago, Milwaukee & St. Paul Railway Company, the Company assumed $154,479,000, principal amount, of the funded debt outstanding, secured by mortgages on properties acquired by the Company and by equipment trusts, and issued $106,395,096, principal amount, of its own Fifty-Year 5 per cent Mortgage Gold Bonds, series A, and $182,873,693, principal amount, of its own Five Percent Convertible Adjustment Mortgage Gold Bonds, Series A."

Q. You were a director of the road at that time, Mr. Sparrow?

4766 A. Yes, sir.

Q. And an officer at that time?

A. Yes, sir.

Q. Now, this $154,479,000 of bonds stated to have been assumed by the Milwaukee Road, can you tell us whether the Milwaukee & Northern bonds were included in this 154 million dollars?

A. Yes, sir, they were included.

Q. They were included?

A. Yes, sir, they were included.

Q. Will you please show the Commission exactly where they were included in the assumed bonds in this 1928 report?

A. Do you know the page it is on, to save me time?

Q. Yes, sir; look at page 25.

A. Yes, sir, there it is.

Q. Will you read into the record the page at which it appears?

A. Page 25 of the annual report, 1928, statement, funded debt unmatured, December 31, 1928, and there is included in that statement the Milwaukee & Northern Railroad first mortgage, date of maturity, June 1, 1934, $2,155,000, and the Milwaukee & Northern Railroad Company consolidated mortgage bonds, maturity date June 1, 1934, $5,092,000.

Q. And these are the same bonds which you state now were not assumed by the railroad company? Is that right?

4767 A. That is correct.

Q. Was application made to the Interstate Commerce Commission for permission to assume these bonds in connection with the acquisition of the Milwaukee properties in the plan of reorganization?

A. I think that is correct. I think it was. I am not sure.

Q. In the application for permission to purchase the property under the plan of reorganization, application was made at the same time for permission to assume these bonds? That is correct, is it?

A. I believe that is correct.

Q. Are you familiar with the 1925—just to go out of order a little, in connection with the application made to the Commission for the extension of the Milwaukee & Northern bonds, on or about June 1, 1934, finance docket No. 10398, was the statement made to the Commission that these bonds had not been assumed, these Milwaukee & Northern bonds?

A. I think so.

Q. That statement, however, was not in accordance with the 1928 report of the road itself to its own security holders? That is correct?

A. That is correct.

4768 Q. Now, can you explain to the Commission the inconsistency between the statements in the 1928 report and the statement on page 2 of your typewritten testimony, and the statement contained in this application to the Commission under the finance docket to which I just referred?

A. The explanation is that the statement in the 1928 report was an error, through a misunderstanding on the part of the comptroller and myself at that time as to the legal import and significance of the word "assumed". It was just simply an oversight that got through.

Q. Can you explain how that oversight is supposed to have gotten through?

A. Ignorance is about the only way I can explain it.

Q. Was counsel for the road a director of the road at that time?

A. Our general counsel?

Q. Yes.

A. No, sir; he was not a director then, and is not now.

Q. Was your special counsel a director of the road at that time?

A. Yes, sir.

Q. Was Mr. Swaine a director of the road at that time?

A. He was the special counsel I thought you were referring to.

4769 Q. He is the special counsel I was referring to?

A. He was a director of the road.

Q. Does his name appear as one of the directors, by order of whom this report was submitted?

A. Yes, sir.

Q. Was this report submitted to Mr. Swaine, or any other counsel, before it was submitted to the security holders?

A. A copy of the report was submitted to every director.

Q. And approved by him, approved by each director?

A. Each director was given a copy of the report in advance of the meeting and asked if any of them had any suggestions to make or corrections.

Q. And were any suggestions made by any director, legal or otherwise, with respect to the statement in this report that these Milwaukee & Northern bonds had been assumed by the Milwaukee road?

A. No, sir.

Q. By nobody?

A. No, sir.

Q. Was this report submitted to the general counsel of the road before it was submitted to the security holders?

A. I could not state definitely as to that.

Q. Who was your general counsel at that time?

A. I think Mr. Field was then the general counsel.

Q. Mr. who?

4770 A. Field.

Q. Mr. H. H. Field, general counsel, it says here. Was the report submitted to Mr. H. H. Field, before it went out to the security holders?

A. I could not tell you that.

Q. Were you present at any meeting that Mr. Field was present at?

A. I have no recollection of any meeting.

Q. Was it the custom to submit the annual report of the company to its general counsel before submission to the security holders?

A. I think the general counsel generally got a copy. But I cannot say definitely.

Q. You would say that it was the custom to submit it to the general counsel?

A. I think so.

Q. Was it the custom of the general counsel to make suggestions from time to time with respect to annual reports, as he might feel best served the legal interests of the road?

A. I have no recollection of getting any suggestions from the general counsel.

Q. Never received any suggestion with respect to this report from your general counsel?

A. I have no recollection.

4771 Q. Or with respect to any other report?

A. I have no recollection of it, I say.

Q. Now, was this report submitted to the general solicitor, before it went out, Mr. Dynes?

A. I think probably not.

Q. Probably not. Was it not the custom to submit the report to the general solicitor?

A. I doubt if it was, before the report was printed. I cannot say definitely on that.

Q. Do you know or do you not know on that?

A. I do not know.

Q. You say you doubt whether it was, before the report was printed. Was it after it was printed?

A. Yes, he gets a copy of the report.

Q. When did you first discover that error with respect to the word "assumed"?

A. I do not recollect. I think it was through a letter

written in by some holder of the bonds—I do not know whether it was your client or who wrote in about it.

Q. When? You say you think it was a letter.

A. I think it was a letter that was addressed, or may have been addressed to the counsel of our board—I am not sure—but it was a letter which came up in 1934, I think.

Q. That was after the meeting of the board?

4772 A. I cannot recollect whether it was before or after.

Q. But, in any event, during the consideration of the annual report of 1928, you never discovered this error with respect to the word "assumed", until you received a letter from some bondholder. Is that correct?

A. That is correct.

Q. The name of the bondholder you do not know?

A. No.

Q. The date you do not know?

A. No.

Q. Who sent this letter you do not know?

A. Who sent this letter I do not know.

Q. You simply know, as a result of the letter received, you discovered that the error had been made?

A. Yes, sir.

Q. How did you discover how that error had been made? Explain in detail how you discovered that that error had been made.

A. I thought I just explained it.

Q. No, no.

A. What more explanation do you want me to give?

Q. I want you to give the circumstance under which you discovered it, and the conversations that you had, who pointed it out to you, if anybody, whether you discovered it yourself, and each and every circumstance leading

4773 up to the discovery of the fact that the word "assumed" was in error, as you now say it was.

A. I did not discover it myself, never gave it any thought after the report was printed. I have explained to you that that crept into the report in the drafting of it. It was not drawn by a lawyer, in the first place. I knew we had acquired the property and were continuing to pay that interest, and I, in a layman's way, figured that we had assumed the interest. I have now progressed further in my legal education and know now the meaning of the word "assumed".

Q. You may not have gone as far in your legal education as you think you have.

A. No, but I am trying to explain to you how I found out. It was called to my attention through a letter written by somebody, but whether it was your client or not I do not know. And I think it was written to Mr. Swaine, because I think he was the gentleman who called my attention to it.

Q. Does this same error apply to the remaining bonds referred to as having been assumed, the remaining 154 million dollars of bonds, or to any of them? Do you understand the question?

A. No.

Q. The report states that 154 million dollars of bonds were assumed by the Milwaukee Road in connection
4774 with the reorganization.

A. Yes, sir.

Q. Of which approximately seven million dollars represented Milwaukee & Northern bonds.

A. Yes, sir.

Q. This error with respect to the word "assumed", does it apply to any other issue included in the 154 million dollars, or does it apply only to the Milwaukee & Northern?

A. To the best of my knowledge and belief, it applies only to the Milwaukee & Northern.

Q. Now, were there written agreements of assumption with respect to all these other bonds?

Mr. Swaine: Just a moment. Let us identify all the other bonds.

Mr. Hoffman: I think that is a good idea.

Q. (By Mr. Hoffman.) Will you identify for the record and give for the record the number of bonds aggregating $154,479,000, stated to have been assumed by the 1928 report?

A. The 154 million dollars does not appear on this page.

Q. Will you find it wherever it does appear? If you require any assistance, Mr. Sparrow—

A. I should say that this does not apply to the 50-year mortgage, because that was the new issue of the company. It would apply to all the general mortgage, the Bel-
4775 lingham Bay and Milwaukee & Northern. Those are the only bonds listed there.

Q. Will you be kind enough, Mr. Sparrow, to go through the report and take your time, and list up those bonds that aggregate that 154 million dollars?

A. It may take some time.

Q. That is all right. Take your time.

Director Sweet: We will take a short recess.

Mr. Swaine: Perhaps I can help you. Is not that 154 million dollars made up of the then outstanding general mortgage bonds and the Milwaukee & Northern bonds?

The Witness: That is what I think.

Q. (By Mr. Swaine.) And did you not introduce yesterday the instrument of assumption of the general mortgage bonds?

A. I did.

Director Sweet: We will take a short recess.

(Thereupon a short recess was taken.)

Mr. Swaine: I think we have the break-down of that figure for you.

Mr. Hoffman: Thank you.

Director Sweet: You may proceed.

Q. (By Mr. Hoffman.) Mr. Sparrow, before the recess you were working on the break-down of the 154 million dollars of bonds. Have you accomplished that break-down?

4776 A. I think so.

Q. Will you proceed to give it?

A. That $154,479,000 is made up of general mortgage bonds, series A, B, C and D, 99,788,000; Milwaukee & Northern Railroad Company first mortgage bonds, 2,117,000; Milwaukee & Northern Railroad Company consolidated mortgage bonds, $5,072,000; Bellingham Bay & British Columbia Railroad Company first mortgage bonds, $390,000; Chicago, Milwaukee & St. Paul Railway Company ten-year 6 per cent first mortgage bonds, security, gold loan of 1924, $14,000,000; Chicago, Milwaukee & St. Paul Railway Company equipment gold notes, $8,764,000; Chicago, Milwaukee & St. Paul Railway Company equipment trust certificates, Series A, $5,390,000; Chicago, Milwaukee & St. Paul Railway Company equipment trust certificates, Series B, $1,024,000; Chicago, Milwaukee & St. Paul Railway Company equipment trust certificates, Series C, $9,900,000; Chicago, Milwaukee & St. Paul Railway Company equipment trust certificates, Series D, $8,034,000. That totals $154,479,000.

I said to you that the error in the report as to the statement of assumption by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company applied only to the Milwaukee & Northern. I think I was in error in that. I think it also

applied to the Bellingham Bay & British Columbia Railway Company first mortgage bonds of $390,000. No
4777 agreement of assumption was made as to the $14,000,000 ten-year mortgage loan because it was paid off within a few months after the new company.

Q. By the new company?

A. Yes, sir.

Q. So that the error arose not only with respect to this particular issue but with respect to another issue as well?

A. I think the Bellingham Bay is the only one.

Q. As a matter of fact, the Milwaukee & Northern bonds were the first bonds to mature of the so-called assumed bonds, after the reorganization, were they not?

A. The Bellingham Bay matured first. They matured December 1, 1932.

Q. What disposition was made of those Bellingham Bay bonds at maturity?

A. As I recollect it, about $90,000 was paid off through the sinking fund, or $301,000 which the Milwaukee itself owns and has pledged as part collateral with the R. F. C.

Q. So that in substance it makes no difference with respect to those bonds as to whether they were assumed or not? Is that correct?

A. It does not make any difference now.

Q. The road fulfilled its obligations with respect to those bonds, if any, as fully as if it had assumed those
4778 bonds at that time?

A. That is correct.

Q. By the way, what is the oldest issue on the Milwaukee System, the oldest issue of bonds of the Milwaukee System, those which have been outstanding the greatest length of time?

A. I do not know that I can answer that question.

Q. What is the issue date? What securities are outstanding at the present time, and what is the issue date of each of them respectively? You can get that from your plan, or you can get it from your last annual report.

A. Have you got the last annual report, Mr. Wilson?

Mr. Swaine: If there is any report—I do not know whether it is a fact or not—we will concede it is the Milwaukee & Northern bonds.

Mr. Hoffman: I believe it to be a fact that the Milwaukee & Northern bonds were the oldest bonds on the road and that they have been extended from time to time, and that they are still outstanding in principal amount, in

the same amount in which they were originally issued, and the point of my question is, that I want to bring out that the moneys have never been impounded for the furnishing of a sinking fund or retirement fund on these bonds; that the Milwaukee and then its predecessor has taken this excess revenue from the road in disregard
4779 of the rights of the bondholders, and still persist in saying that the bonds are extended, saying they have not assumed them, and retaining the equity from the property as well.

Mr. Swaine: I do not concede all that.

Mr. Hoffman: Naturally not.

Mr. Swaine: I will concede the point which you tried to make on your question, that the Milwaukee & Northern bonds are very old bonds, perhaps the oldest. I will concede it for the record, so as to stop the discussion, that they are the oldest. I do not know, but I will concede that they are.

Q. (By Mr. Hoffman.) Now, Mr. Sparrow, in connection with your duties as financial vice president, which I believe you said you were, was it your duty to supervise the statements that were issued to the various financial services with respect to various capital structures, that is, to the various financial services, on the capital structure of the St. Paul road?

A. It is not my duty to supervise the statements which appear in financial services.

Q. The statements which were given by the Milwaukee road to the various financial services with respect to its capital structure, I mean.

A. I do not take any responsibility for any state-
4780 ments financial services may issue.

Q. That is correct, but my question, however, was, is it your duty to supervise the statements which are issued by the Milwaukee road to the financial services?

A. It is not my duty to supervise any statements unless I issue them myself.

Q. Do you know what officer or employee of the railroad is charged with the issuance of financial information to financial services?

A. I do not know that anyone is charged with that duty.

Q. Do you know whether or not that duty is assumed by any officer or employee of the railroad?

A. I know sometimes financial services, such as Moody's, write in and ask for information, and we try to give them

the information, but we do not assume any responsibility about it.

Q. Do you know whether or not Moody's, Fitch, or any other financial service inquired with respect to the assumption of the liability as to Milwaukee & Northern bonds?

A. I do not know, but to save time, I will say they may have, and if they did, they got the same information which was in the annual report, before we found out the facts.

Q. And that is, that the bonds were assumed?

4781 A. Yes, sir.

Q. I show you a photostat of what purports to be a proof issued by the Fitch Publishing Company, financial statisticians of New York, being printed matter and containing corrections in handwriting with respect to various items on the proof, and ask you whether you recognize the handwriting of those corrections? (Handing document to witness.)

A. No, I cannot recognize that handwriting. It is not my handwriting.

Mr. Hoffman: May it please the director, we got the photostat from Fitch's Service, and you may subpoena them. I would like to submit that to counsel for the debtor, and see if they have any objection to it going in as an admission by the Milwaukee road that at that time they stated they had assumed the obligation on these Milwaukee & Northern bonds, because that statement appears here, without correction.

Mr. Swaine: I will answer that without even looking at that statement. We do not concede that any statements of any financial service are admissions on our part. We do concede, as an admission against interest, that we made an erroneous statement in the 1928 report, that these bonds were assumed. And now, just to cut this short as to

4782 its significance, it is the fact that all but 39,000 of the first mortgage bonds and 220 some odd thousand of the consolidated mortgage bonds have actually been assumed. It is also the fact that the plan gives to the unassumed bonds, which this gentleman represents, exactly the same treatment which is given to the assumed bonds. So that his bonds are treated under the plan exactly as if this error never had been made and the bonds had been assumed.

Mr. Hoffman: Mr. Director, if I may make the statement, I am afraid Mr. Swaine is slightly in error, or at

least the conclusions from Mr. Swaine's statement may be erroneous, for the following reasons:

1. Those who assented to the extension were offered and received $50 per bond, and the road at that time further raised the interest rate from 4½ to 5.66 per cent on the bonds, and the extension was until 1939.

2. A separate indenture was entered into between the assenting bondholders and the road, to which the City Bank Farmers Trust Company, who was the trustee under our indenture, was also a party.

3. Our bonds came due in 1934, and we did not assent to the extension. We did not take the $50, we did not want the $50, and to force us now to an extension to which we did not agree before, when we were offered money for it, would be manifestly unjust.

4783 I do not think Mr. Swaine's statement, as made, exactly represents the facts.

Mr. Swaine: Let me put it this way: The road makes no point in this proceeding of not having assumed those bonds, and is willing to treat them in this proceeding exactly as if they had been assumed. The Commission in its consideration of the plan, so far as we are concerned, may treat the bonds just as if they had been assumed.

Mr. Hoffman: May the Commission treat those unassumed bonds as a separate class of creditors?

Mr. Swaine: No.

Mr. Hoffman: That is our claim, Mr. Director, that we represent a separate class of creditors, who should be paid off, and who should have been paid off, and that if these bonds had been assumed, Mr. Swaine's admission now is of no help to us, because if these bonds—

Commissioner Porter: Does not his admission at least cover the point that you are trying to make in the record?

Mr. Hoffman: In part, Mr. Commissioner, and I will pass the point for the moment.

Q. (By Mr. Hoffman.) For the purpose of the record, will you state who the trustees of the Milwaukee & Northern indentures are, the trustees of both indentures?

A. I do not recollect who they are. It is in the

4784 record already.

Q. Is it the City Bank Farmers Trust Company?

A. I think it is.

Q. And that bank is the successor of the Farmers Loan & Trust Company? Is that correct?

A. I believe that is correct, yes. Here it is. It is the

Farmers Loan & Trust Company of New York. They were the trustees May 31, 1913.

Q. Yes, sir. Now, in connection with the 1925 reorganization, did the Farmers Loan & Trust Company appear in the proceedings?

A. I do not recall.

Mr. Swaine: What is the question?

(Question read.)

Mr. Hoffman: The point which I make is one familiar to you, Mr. Swaine, I think, and that is that the Farmers Loan & Trust Company intervened in the proceedings in Chicago, representing other bonds than ours, and did not intervene with respect to our own bonds, and acted as depository with respect to the bonds junior in lien on the Milwaukee & Northern, but did not file claims as creditors for the Milwaukee & Northern bondholders in the 1928 reorganization. That does not directly affect the Milwaukee road, and if you will make the concession, we will pass it for the moment.

4785 Mr. Swaine: I do not know any of those facts, and I do not think they are relevant to this proceeding. I can do no more than to say to the Commission, to treat those bonds exactly as if they had been assumed by this company.

Mr. Hoffman: This goes to a different point, that the trustee under the indentures is not qualified to represent us, either before the Commission or the court in Chicago now.

Mr. Swaine: I do not understand that the trustees under the indentures have asked to represent you here. They have not appeared in this proceeding, and I do not see how the Commission can decide whether they can represent you in a proceeding in Chicago before the court.

Q. (By Mr. Hoffman.) Now, refer to page 3 of your typewritten statement, under the title of "Ownership of Equipment," at the bottom of that page.

A. Yes, sir.

Q. You state that "the equipment owned by Milwaukee & Northern Railroad Company as of the date of its acquisition by Chicago, Milwaukee & St. Paul Railway Company, June 26, 1893, comprised 34 steam locomotives, 37 passenger train cars, 990 freight train cars and two units of work equipment." And you go on to say that "as of June 30, 1935, there remained of this equipment one pas-

senger and baggage car, one business car, and six
4786 units of work equipment converted from passenger cars."

What happened to the remaining equipment, if you know

A. Worn out, torn down.

Q. Was any of it sold?

A. I suppose the scrap was sold. I do not suppose any units were sold as such. I imagine, but I cannot testify from my personal knowledge, because I was not with the road.

Q. Can you testify from the books?

A. No, I cannot. I could not tell you. I assume that in the ordinary course of events, the equipment reached the point where it was not economical to repair it, and it was worn out and torn down and the scrap sold.

Q. What was done with the proceeds of this worn-out equipment?

A. I could not tell you. That was before my time.

Q. Would the records of the Milwaukee road show what was done with it?

A. I am sure they would. It probably went into cash and you would never be able to tell what happened to it.

Q. It went into cash, that is, into the cash account of the Milwaukee road?

A. I suppose so.

Q. Who are the trustees under the indenture?

4787 A. I could not answer that.

Q. Can you supply the information, Mr. Sparrow?

A. I will try to.

Q. Can you secure the information as to the equipment, as to 34 steam locomotives, 37 passenger train cars, and 990 freight train cars, and two units of work equipment? Is that information present in court now?

A. No, but I would say offhand it ranged somewhere from two million dollars to three million dollars.

Q. That is your best estimate as to the value?

A. That is a good guess. Those locomotives were no doubt light and small and would probably cost you about $40,000 a piece to replace them now.

Q. You mean to say that neither of the Milwaukee & Northern mortgages contain a specific measure of replacement obligations? That statement is made on your own examination of those mortgages, I take it?

A. That is.

Q. It was not supplied to you by anybody else?

A. There is not anything in my statement supplied to me by anybody.

Q. Yes, sir.

A. I would like to have that clear in the record, as you have inferred it more than once.

Q. I have not inferred anything, Mr. Sparrow.

4788 A. Everything in that statement, Mr. Director, was written by myself from the information collected, whether it is good, bad or indifferent.

Mr. Hoffman: May I have exhibits 15, 16, 17, and 18? I have here some typewritten copies which were supplied to me by the City Bank Farmers Trust Company, and if there is no objection I can use them on the first mortgage. On the consolidated mortgage I have some copies, prepared from copies given to me by the City Bank Farmers Trust Company. If there is no objection, I will use these. 15 and 16 is the supplement to the first mortgage, and 17 is the consolidated mortgage, and 18 is the supplements to the consolidated mortgage.

Mr. Swaine: That is right.

Mr. Hoffman: Those are the four exhibits with which I would like to deal for a moment, and if I can, I will use these copies.

Mr. Swaine: I have no other copies.

Mr. Hoffman: With the permission of the director, I will use these copies which I have here, and if there is any error in these copies, it can be pointed out.

Director Sweet: Of course, whatever you read here is subject to correction by comparison with the exhibits in the record.

Mr. Hoffman: Yes, of course. This is an exhibit

4789 attached by the City Bank Farmers Trust Company, which purports to be a true copy of the first mortgage. I assume it is.

Director Sweet: I am not sure you cannot make the point by argument by referring to the testimony already in the record.

The Witness: I am pretty familiar with the provisions of the mortgages, if that is what you want, and when you read them I will know whether or not they are right or not.

Mr. Hoffman: The witness stated the mortgage contains no specific provision for replacement obligations, and we say that the mortgages do.

Director Sweet: Is not that a question of argument?

Mr. Hoffman: It could be; if the Commission wishes to reserve the point for the brief, we will treat it in the brief, and we could just as well do it.

The Witness: I would like to say, Mr. Director, a word. When saying they contain no specific provision, I meant clearly set out a specific amount in dollars and cents which you could measure. Our first and refunding mortgage has a specific measure, which is the depreciated book value of January 1, 1929. You can say it is so many dollars. The Terre Haute has a specific measure. Speaking from rec-
ollection, one of those mortgages provide when equip-
4790 ment is worn out or sold, you take the proceeds of it and deposit it with the trustee or buy equipment. The amount which you would get out of the scrap sale of the equipment would be a very small amount, going toward the purchase of equipment. I think the general mortgage speaks in general terms about equipment, but it does not contain, according to my understanding, a specific measure as to how that equipment is to be replaced.

Mr. Hoffman: May it please the director, reading from the first mortgage: "And said trustees shall also have power to allow the said party of the first part from time to time to dispose of such portions of the equipment, machinery, and personal property upon or connected and used with said first division, or at any time acquired or held for the use thereof, as may have become unfit for such use, replacing the same by new and suitable articles which shall at once become subject to the operation of these presents and the uses and trusts hereby created."

Therefore, it is a direct obligation to replace. I will reserve the point for brief and I will quote, if the Director prefers, in brief from the various indentures, showing a direct obligation to replace this equipment.

Furthermore, I would like to have supplied the
4791 Commission now the terms of the consolidated mort-
gage, the value of this worn-out, used and discarded equipment which was sold and apparently not deposited with the trustee. It is a part of our security and we are entitled to that.

4792 Mr. Swaine: For the sake of the record, it will be conceded by the debtor that the equipment maintenance of the Milwaukee & Northern was handled just like the others, and one of the provisions of the plan is a waiver of that failure to maintain equipment.

Q. (By Mr. Hoffman.) Now refer to page 5 of your

typewritten statement, you say that: "In the ascertainment of freight revenues an analysis was made of each and every shipment for the full year * * *." That means both interline and on the line, does it not?

A. It means all shipments.

Q. And you say "from which there was determined the total freight charges * * *." I do not quite understand that statement. Will you amplify what the statement means?

A. There might be a shipment that moved from a point originating on the line of the Milwaukee & Northern, and it might have moved off to a point east on the Pennsylvania Railroad. Those are total freight charges. Then when that was determined, there would be determined the Milwaukee's division of those freight charges.

Q. How was the Milwaukee's division of those freight charges determined?

A. According to the regularly established divisions between the Milwaukee and the various railroads.

Q. How was the proportion of the Milwaukee &
4793 Northern determined?

A. I stated that. It was on a mileage prorate, with a minimum of 25 per cent. That is the customary short line division.

Q. To the Milwaukee & Northern?

A. Yes, sir. They got a mileage prorate with a minimum of 25 per cent.

Q. In one of the exhibits which you submitted here, I believe it is exhibit No. 80, you referred to carload traffic handled on the lines subject to the Milwaukee & Northern mortgages. Have you any record of the l. c. l. traffic?

A. I have not it here. It is included, but I do not have it here. This exhibit No. 80 was simply the carload traffic, the purpose of that exhibit being to show the varied commodities handled. We do not have records by less carload, and this was the carload which we made up, to get the various commodities handled and the number of carloads to give an idea of the diversity of traffic on the line.

Q. I personally do not quite understand the heading opposite the word "commodities." Can you give us any further explanation of that heading? The first heading there says, "From Milwaukee & Northern to and from other Milwaukee System lines at Milwaukee." A
4794 sub-heading says, "From Milwaukee & Northern." What does that mean?

A. The heading is "To and from other Milwaukee System lines at Milwaukee."

Q. Yes, sir.

A. That is the point where the connection is made with the Milwaukee & Northern.

Q. Yes, sir.

A. There were from the Milwaukee & Northern, going to the Milwaukee System lines, 174 carloads of agricultural products. Now, in the same way they were returned.

Q. I see. But no intra-line traffic is shown here?

A. Do you mean—

Q. Traffic originating and terminating on the Milwaukee & Northern lines.

A. That would be the "all other."

Q. What is the significance of those words, "all other"?

A. That might be a car that originated on the Milwaukee & Northern, and it might have been interchanged with a foreign connection that connects with the Milwaukee & Northern, or might have been all local on the Milwaukee & Northern, and no significance except to show the amount of business that was interchanged between other parts of the Milwaukee System and the Milwaukee & Northern.

Q. Did any of these carloads included under "all other" have to travel to a destination on a foreign road
4795 partly over the Milwaukee System?

A. In considering the Milwaukee & Northern as a part of the System, I would say no. That is, a car that is local to the Milwaukee & Northern or went over a part of the road that had no connection with the Milwaukee & Northern.

Q. Do you mean such as the Duluth and South Shore?

A. And the Green Bay & Western and such other lines.

Q. The dates which you list here, the months, which have been expanded to represent the yearly traffic are December, March, June and September. How were those months arrived at? What particular significance is there to the use of those particular months?

A. Just getting the various months through the year, a winter month, a spring month, a summer month, and a fall month, which would take in the seasonal fluctuation. You will notice for iron ore, the ascertainment was made for the full year. Iron ore is ore moving in a few months.

Q. Now, agricultural products. When does that move?

A. They move all through the year. The significance

of that is simply to save time and to make a twelve-months analysis it would be more representative and typical to take the months December, March, June and September than to take April, May, and June, for example.

Q. When was this prepared, Mr. Sparrow?

A. It was prepared some time at the beginning
4796 of 1934, as I recollect it. It was prepared before we went to the bondholders for the extension.

Q. Have you any information as to whether or not in December, 1932, and in these respective months which you have used, traffic was higher or lower than it has been since?

A. As to December? No, I have not. I have already testified that in 1934, the station earnings of the lines of the Milwaukee & Northern showed an increase of 19 per cent over 1933.

Q. What do you mean by the "station earnings"?

A. A man comes into the station with a shipment, and he is going to ship a carload of potatoes to some place, and he may prepay it. If he does, those are the earnings of that station. These earnings may be all Milwaukee, and it depends whether the shipment is moved off the Milwaukee or whether it is not. The station earnings do not necessarily, and do not as a rule, in fact I would say hardly ever, do they represent the revenues of the Milwaukee. Generally, a car is delivered to a point on the Milwaukee & Northern, and the consignee pays the freight charges. Some of those freight charges may be due the Illinois Central or some other foreign line.

Q. And, conversely, when a car is shipped, the freight may be collected, and be collected at the other end?

A. It may.

4797 Q. So that the station earnings in and of themselves represent no true criterion of the earnings of the Milwaukee & Northern? Is that correct?

A. I explained that. I will say that the station earnings themselves do not reflect the earnings of the Milwaukee & Northern. The only purpose of that being, as stated in my testimony, that since the station earnings on the Milwaukee & Northern were 19 per cent more than they were in 1933, it was reasonable to assume that the Milwaukee share of those station earnings was also 19 per cent more, and, consequently, the Milwaukee & Northern share would be 19 per cent more.

Q. In order to clarify the thing, you based one supposition upon another. Is that correct?

A. I made what I thought was a reasonable assumption.

Q. Now, at the top of page 6, you state that: "On all business originating or terminating within the Milwaukee switching district a switching charge was made against the Milwaukee & Northern." Is that switching charge customary?

A. Yes, sir.

Q. What is the basis of that switching charge?

A. It is the regular practice between all railroads. The Milwaukee & Northern does not enter into the Milwaukee terminals but ends at North Milwaukee. If
4798 it brings a car down, going to the industries, on the Milwaukee or North Western, then the Milwaukee or North Western are going to make the switching charge.

Q. And the switching charge which you make to the Milwaukee & Northern, is that based on the regular and normal switching charges to all other roads?

A. It is the regular tariff switching rate.

Q. How could you make a switching charge to the Milwaukee & Northern if you kept no separate charge of the Milwaukee & Northern?

A. We estimated. That is all an estimate.

Q. You say: "On all business originating or terminating within the Milwaukee switching district a switching charge was made against the Milwaukee & Northern."

A. Yes, there was.

Q. How can you make a switching charge when you did not segregate the income and expenditures?

A. It seems to me it is perfectly simple. We know what cars move off the Milwaukee & Northern for destination in the Milwaukee district, and made an estimate of it and deducted them.

Q. You estimated the revenues and you estimated the switching charges?

A. I said we estimated the revenues by making an analysis of the waybills.

4799 Q. Will you please answer my question categorically? You estimated the revenues and you estimated the switching charges? Is that correct?

A. Not exactly. I won't answer that yes or no, categorically. I have already explained it in my testimony, saying that it was taken from an analysis of the waybills, which shows the charges to be the actual divisions in ef-

fect between the Milwaukee and other railroads, where used, and the Milwauee & Northern was allowed the customary short line division of the mileage prorate with a 25 per cent minimum, and, in accordance with the regular practice of all railroads, the switching charge was absorbed out of the Milwaukee & Northern's revenue so exacted.

Mr. Hoffman: Mr. Director, I do not ordinarily mind any explanation which helps clarify the issue, but I think I am entitled to a direct answer to this question: Did he estimate the revenues, No. 1; did he estimate the switching charges? He knows whether or not he did, and let him say yes or no.

Director Sweet: The witness has answered that question, I think.

Mr. Hoffman: All right, sir.

Q. (By Mr. Hoffman.) Now, with respect to passenger revenue, the method used by you might result in a larger or lesser share of the revenues being allocated to the
4800 Milwaukee & Northern than would be justified by the actual passenger traffic. Is that correct?

A. It might reasonably vary, one way or the other. It states how it was done, and speaks for itself.

Q. We come now to page 7, operating expenses. You say: "Maintenance of way expenses, therefore, are the actual costs taken from division records, after clearing the expenses of the line from Kelso Junction to Crystal Falls and Iron River."

Did I correctly understand you to say that no separate account was made of the income or expenses of the Milwaukee & Northern road?

A. If you mean, is there a separate set of books kept for a hypothetical Milwaukee & Northern Railroad—

Q. Yes.

A. The answer is "no."

Q. Will you please explain how your maintenance of way expenses and the actual costs from the division records are arrived at?

A. I have already explained that once. If the director wishes me to explain it again, I will do it, but it has already been explained that the Milwaukee & Northern makes up the entire Superior division of the Milwaukee Railroad with the exception of that little piece of mileage from Kelso to Iron River.

4801 Now, the division: We have division accounts and we keep certain expenses of the divisions separate and the maintenance is one. We had to go to the records. I do not know how many months, and I cannot tell you now, but I would assume they went to the records and found out the amount of maintenance on that Kelso line, and took what the percentage of that was and from that figured proportionately the amount for the year.

Q. So that it represents substantially an accurate item?

A. I should say that is an accurate item.

Q. On exhibit No. 81, to which I draw your attention for a moment, you have an item Maintenance of equipment, $412,808 for the year 1933, and $436,420 for the year 1934. Will you please give us the break-down of that maintenance of equipment?

A. I cannot give you any more details than I have already given. I have explained how it was done. We can furnish them, Mr. Director, if it is desired, but the working papers are in Chicago. I have explained exactly how it was done. The Milwaukee & Northern, as to the repairs and depreciation, was based on the system repairs per car mile, applied to the car mileage made on the Milwaukee & Northern, and the rental is an interest rental at 5 per cent on the estimated, depreciated value on actual locomotives in use and on 1,000 freight cars, which, in
4802 the opinion of our superintendent of transportation would adequately handle the business. I do not have the details of that here. If it is desired, it can be supplied.

Q. Do you know what the depreciation item is?

A. I know that for all of those studies, in arriving at the rental figure, we made an estimate of the value new and depreciated 50 per cent.

Mr. Hoffman: Mr. Director, if we may have that information, I would appreciate it. If I may point out to the director, the point which I have in mind is that the income is $132,500 for the year 1934, and rentals, as the statement says, are based 5 per cent on the estimated depreciated cost of the equipment used on the Milwaukee & Northern. On top of that, they charge the Milwaukee & Northern with depreciation of equipment which it does not have, because they have replaced this equipment and the equipment belongs to them. On top of that, apparently, they have made locomotive repairs and freight and passenger car repairs, which they charged up to the Milwaukee

& Northern System, so to speak. Our point is that, unless we have a break-down of that, we have no true ascertainment of the revenues and expenses that are applicable to those Milwaukee & Northern bonds.

Director Sweet: Perhaps the witness can give it
4803 to you.

The Witness: I can give it to you now. I did not know we had it here, but we have.

The rental on locomotives, freight and passenger cars, as I stated, was made on the locomotives and cars needed to handle the Milwaukee & Northern traffic for the year ending September 30, 1933. After finding out the estimate for both the freight cars and the locomotive assignments, with the Milwaukee & Northern as a separate line, the conclusion was reached that the line in question would get the following equipment: 34 locomotives at $75,000, depreciated 50 per cent, $1,275,000; 1,000 freight cars at $2,000 each, depreciated 50 per cent, $1,000,00; thirty passenger train cars at $25,000 each, depreciated value $375,000, total depreciated value $2,650,000, 5 per cent, $132,500.

Q. (By Mr. Hoffman.) That we have, but what item of depreciation enters into your maintenance of equipment, $412,000? You have already explained that 5 per cent item before, this $132,500.

A. You are now talking about maintenance of equipment and not rental?

Q. Yes, sir, locomotive repairs.

A. I will state again what I have already put in the record, that the locomotive repairs are the actual
4804 repairs are the actual repairs made to the locomotives used on the lines. The freight and passenger train car repairs were determined by applying to the mileage made by each class the average system repair costs per mile. The depreciation on both locomotives and cars is the Milwaukee & Northern's proportion of system charges based on its ratio of locomotive and car miles to the total locomotive and car miles of the system.

Q. These locomotives and cars which you state are used on the line, are they used exclusively on the line?

A. The freight cars are not used exclusively. The locomotive assignments—there may be a few exceptions—but they are assigned to that division and go on that division, and the passenger cars are all assigned that division.

Q. Broad or narrow gauge?

A. It is regular standard gauge. You do not agree—perhaps it is not proper for me to say it.

Q. Go ahead and make any statement.

A. I was going to say in discussing these repairs, you would agree that if the Milwaukee had replaced the equipment, you would have to repair them.

Q. You put the equipment there and we would repair it.

A. I wondered why you were questioning the repairs.

Q. I am questioning the repairs because the
4805 equipment has been taken from the Milwaukee and Northern from under the Milwaukee & Northern's mortgages. None the less, you charge interest for repairs of equipment which would take the place of it and a depreciation item on the equipment.

A. You are wrong on that. Let us get it clear.

Mr. Swaine: We did not attempt to set up the situation that would exist if the Milwaukee property were a solvent, going concern, capable fully of meeting all obligations under all of its mortgages. What we have tried to show is an allocation of the present earnings of the system between the various mortgage liens, and we made an effort to allocate the earnings, but gave effect of the proposal to the properties without regard as to whether covenants have been fulfilled or not. It was simply a physical allocation of the earnings.

Mr. Hoffman: My point is that that allocation of the earnings is incorrect, being based on estimates not supported by facts.

Mr. Scandrett: Maybe you can make a better one.

Mr. Hoffman: I am not running the road.

Mr. Swaine: We have so many dollars of income.

Commissioner Porter: Is not all this a matter for argument later?

Mr. Swaine: I should think so.

4806 Q. (By Mr. Hoffman.) At the bottom of page 8 you say: "We ascertained the station earnings of all stations on Milwaukee & Northern lines for the year ending September 30, 1933, and for the year 1934, and found that 1934 showed an increase of 19.11 per cent." And, therefore, in substance you increased the Milwaukee Road's share of the Milwaukee & Northern earnings by 19 per cent. Am I correct in my conclusion from your statement?

A. I increased the revenues ascertained for 1933 by 19 per cent to arrive at the revenues for 1934.

Q. Precisely, and you increased the expenses accordingly by the same 19 per cent in your estimate?

A. Yes, sir.

Q. Now, is it or not a fact—

A. No, I answered too quickly on that.

Q. Let us find out what the facts are.

A. The facts are as stated: They were increased by the same percentage as the percentage of increase in the total Superior division expenses of 1934 over the year ending September 30, 1933.

Q. I do not quite understand that. Could you explain it further so that a layman could understand it?

A. We took the total operating expenses and we ascertained the increase in the total operating expenses for the Superior division, how much they increased in
4807 1934 over 1933, and then we increased the operating expenses ascertained as to the Milwaukee & Northern lines in 1933 via the same percentage.

Q. Did you not in fact increase it about 19 per cent? Take any items, $279,000 plus maintenance of way and structures.

A. I think it works out about that.

Q. As a matter of fact, does not experience demonstrate that when revenues increase, expenses do not increase in proportion? Your own experience, as an operating railroad official.

A. Some do not. Transportation does not.

Q. Any others that do not?

A. It all depends on the circumstances. Many times your transportation expenses will not increase anything like that.

Q. You do not have to have any more station employees to handle the increased traffic?

A. No, sir. There are certain fixed expenses.

Q. Yes, sir.

A. Your maintenance, a large part of it, is fixed without regard as to whether you have business or not.

Q. That is right. So that in substance the increase in gross earnings represents, to a very large extent, an increase in net. Is that correct?

4808 A. I will concede your point that 1934 might make a better showing for the Milwaukee & Northern.

Q. That is not my point. My position is, that in the

estimate for the year 1934, you have assumed a state of facts which would not be borne out by the actual conditions.

A. I do not know that I have.

Q. All right.

A. If anything, I may have assumed larger expenses than would have been incurred, which would make the Milwaukee & Northern show larger earnings on its bonds than I have got.

Q. That is right. That is exactly what I wanted to point out.

A. It might have. But you must remember one thing: We have provided in all these things that some of the maintenance in the last few years has not been as adequate as we like, and when revenues go up we are planning to make up some, as we are doing this year.

Q. Yes, but this was only offered on a comparative basis.

A. Yes, but when you get more revenues, you will have more maintenance under those conditions.

Q. I draw your attention to Debtor's Exhibit No. 76, containing a valuation based on the O'Fallon decision, for all property devoted to transportation service. Was there any property not devoted to transportation
4809 service, subject to the Milwaukee & Northern mortgages?

A. If it was it was very little. I really cannot recollect.

Q. You have no records or information?

A. We have records back in Chicago.

Q. You have not got them here?

A. I do not think any one has them here. I do not know.

Q. Will you inquire?

A. Have you got them here, Mr. Lodge? It was a very small amount, if there was any.

Mr. Lodge: Very little.

Q. (By Mr. Hoffman.) And the valuation of the property covered by the Milwaukee & Northern mortgages was how much, according to this estimate which you have made up?

A. The valuation as of June 30, 1935?

Q. Yes, sir.

A. $12,755,608.

Q. And the total amount of Milwaukee & Northern bonds outstanding, first mortgage bonds, is how much?

A. $2,117,000 first mortgage bonds, $5,072,000 consolidated bonds.

Q. Or a total of what?

A. $7,189,000.

Q. Against this 12 million dollars of property?

A. Yes, sir.

4810 Q. The equity in which is owned by the Milwaukee Road. Now, were any of the earnings of the Milwaukee & Northern ever segregated or sequestered or paid over to the trustee for the benefit of the Milwaukee & Northern bondholders?

A. Not to my knowledge.

Q. May I take your answer as "no"?

A. You may take my answer as "no".

Q. Did the Milwaukee Road take releases of pledged property from time to time from under the mortgage, from under the Milwaukee & Northern mortgages?

A. I cannot answer you definitely on that. I have no doubt they did. I do not remember of any particular case where we took a release, but we may have.

Q. Have you any record of what was substituted with the trustee, if anything, for property released under the mortgage?

A. No, I have not. I think there was very little property released from the mortgage.

Q. Is it or not a fact that nothing was substituted with respect to several releases of pledged property from under the mortgage?

A. Do you mean to say that we got a release from the mortgage without substituting anything?

Q. I want to find out what the facts are.

4811 A. I do not know.

Q. Would it refresh your recollection if I call your attention to the fact that on November 18, 1926, property at Appleton was released from the mortgage, $2,000 in cash, and apparently nothing put in the hands of the trustee to replace that mortgaged property?

A. It would not refresh my memory, but I am surprised it was released from the trustee.

Q. Would it refresh your recollection if I state under date of November 22, 1928, property in Green Bay was released, $75,000 cash, and apparently not deposited with the trustee? I am making no statement it was not. But

the trustee has nothing in his possession at the present time and we want to know what happened to the proceeds.

A. It might have been in additions and betterments. I do not know.

Q. Would it refresh your recollection if I stated that on December 30, 1930, other property in Green Bay was released and nothing substituted?

A. No, it would not refresh my memory.

Mr. Swaine: I do not want any concession that that is the fact. I doubt very much if that is the fact.

Mr. Hoffman: I am trying to ascertain the fact. This is an accounting witness and these facts are within his knowledge and not mine.

4812 Mr. Swaine: You stated whether it would refresh his recollection if such were stated as the fact. We want it understood that the things you are stating are not facts.

Q. (By Mr. Hoffman.) Do you know whether or not they are facts?

A. I do not know and I would be very much surprised if the trustee released it without getting anything.

Q. I may state that on March 21, 1932, certain other property in Appleton was released and other property was received in place of it, so apparently there is a distinction.

If I make the statement to you that the Farmers Loan & Trust, now the City Bank Farmers Trust Company, advises, over the signature of its trust officer, that that institution is successor trustee under the consolidated mortgage, and they presently hold no sums of cash representing property released from that mortgage, would that be an answer to you?

A. Not necessarily, no.

Q. At the top of page 10 you say that the Milwaukee & Northern properties, under independent operation (1891, 1892, and 1893) showed net income after interest of $250,000, $273,000, and $174,000. Those were taken from your records? Is that correct?

A. They were taken from the old Milwaukee &
4813 Northern records.

Q. Which is part of the Milwaukee Road's records?

A. Yes.

Q. Were any records kept subsequent to 1893 of Milwaukee & Northern earnings?

A. I think not.

Q. Have you any estimate of the amount in excess of the interest charges which has been earned by the Milwaukee & Northern line, or the lines comprising the Milwaukee & Northern, since 1893?

A. No, sir.

Q. Would you volunteer a guess, based on the information which you have?

A. No, I would not.

Q. You have no information of any kind?

A. No, and I would make no guess on it.

Q. You are not qualified to give the answer?

A. I am not qualified to make a reply to that question.

Q. You state, as a conclusion to your statement on page 10, that you are of the opinion that the treatment accorded these bonds, referring to the Milwaukee & Northern bonds, under the plan of reorganization, is fully justified. Fully justified from whose point of view?

A. I would think everybody's but yours.

Q. That is a very good answer. Now, I draw your 4814 attention Mr. Sparrow, to the present plan of reorganization, I believe being Debtor's Exhibit No. 1, and to section 5 or article 5, whatever it is, on page 11. Section 1, paragraph numbered A. Section 1 refers to the general mortgage of the Milwaukee & Northern, and so forth, which shall be modified to provide substantially as follows:

"All defaults, if any, in the performance or observance of the covenants contained in such mortgages, which shall have occurred on or before June 30, 1935, shall be waived, and the Reorganized Company shall not be obligated thereafter to remedy any such defaults; including replacement of equipment retired on or before June 30, 1935."

What defaults did you refer to?

A. Whatever defaults there were.

Q. Yes, but what were they? Let us not fence. You have testified—

A. I have testified to the amount of equipment that was on the Milwaukee & Northern when it was acquired, and how much is left.

Q. Do you call it a default, the failure to replace that equipment?

A. I would have to consult counsel as to the exact requirements of those mortgages as to any obligation to replace the equipment, the proceeds of sale of the scrap of that equipment, and the new obligation set up, whatever it was, and whatever default there is on connection with the replacements of that equipment, the plan provides it shall be waived.

4815

Mr. Swaine: And it is conceded that there is a default.

Q. (By Mr. Hoffman.) You testified that the plan is fully justified and that you have studied the plan. The plan provides for the waiver of defaults, and I want to know what they are.

A. They are the defaults or the replacement of the equipment that was acquired at the time the Milwaukee & Northern was acquired by the Milwaukee to the extent that the mortgages require a replacement, and, as I have said, there is no specific measure in the replacement, so far as I am able to determine.

Q. Whatever defaults, if any?

A. I do not know of any other.

Q. Those are the only defaults you know about as affecting the Milwaukee and Northern mortgages? Is that correct?

A. I do not think of any other at the time.

Mr. Swaine: Let me refresh the witness' recollection.

Mr. Hoffman: Certainly.

Mr. Swaine: The failure to pay these gentlemen's bonds in 1934.

The Witness: Of course, yes. I had forgotten about that.

4816

Q. By Mr. Hoffman.) Is your testimony approving this plan, Mr. Sparrow, did you testify as a director, or as a stockholder, or as a representative of stockholders, or as a representative of bondholders, or of a class representing everybody put together?

A. I am just testifying as to my own personal opinion, as an officer of the company, after having made a study of the earnings of the line, and taking all factors into consideration, what I personally think is a fair and equitable treatment of those bonds in relation to the whole problem of the reorganization of the Milwaukee Railroad.

Q. Did you hear Mr. Swaine's opening statement to the Commission?

A. I did.

Q. Do you subscribe to it?

A. I thought it was a very able statement, and I subscribe to it.

Q. In each and every respect?

A. I would say that unqualifiedly.

Q. Did you hear Mr. Swaine's statement that this plan of reorganization had within the germs of a future reorganization within the next ten years?

A. I think it has a few of those germs around.

4817 Q. Now, is it your opinion, Mr. Sparrow, that bonds which were issued in 1880, which have been extended again and again, and which have now matured, and which again contain within the plan the germs of a future reorganization, with possible indefinite postponement of the payment of principal, although the property admittedly earned far in excess of the interest charges, and is worth twice the amount of the issue of the bonds, is a fair plan to those bonds that did not assent to the extension agreement of June 1, 1934?

A. In the light of the conditions we are confronted with today, I would say yes.

Q. Your answer is "yes"?

A. Yes.

Mr. Hoffman: That is all.

Mr. Murphy: May it please the director, and in order to save time and repetition of testimony, I wonder if we might consider the record to show that following Mr. Hoffman's objections, my objections will appear, because we are similarly situated to him?

Director Sweet: You have no questions to ask on your own behalf?

Mr. Murphy: No, sir, I am in exactly the same position.

Mr. Abrams: May I be permitted to ask a few questions?

Director Sweet: Yes, sir.

4818 Q. (By Mr. Abrams.) Do you know what was the cost and expense of the former reorganization in 1928, approximately?

Mr. Swaine: I object to that question. I do not think it has any relevancy to this proceeding.

Director Sweet: Objection sustained.

Q. (By Mr. Abrams.) You stated in your direct testimony that the owners of the 50-year mortgage bonds, want to

have bonds instead of stock. Why was not that applied to the owners of the adjustment mortgage bonds?

A. I stated that the 50-year bonds wanted stock?

Q. Wanted mortgage bonds instead of stock. Did you not say so?

A. I do not think said so, but, anyway, that is a fact.

Q. Why is not that true of the adjustment mortgage bonds?

A. Perhaps the adjustment mortgage bonds would like bonds instead of stock.

Q. Why do you give to one or let them get the bonds and the others you are exchanging for stock?

A. Because the 50-year bonds are prior to the adjustment bonds. The plan maintains the priority of all securities.

Q. Is not the present adjustment bond prior to the stock?

A. It is.

Q. You are exchanging the priority of the adjustment bonds while you are maintaining the priority of the 50-year mortgage bonds?

A. The adjustment bonds' priority is maintained.

4819 They get all the preferred stock. If there are any earnings after the 5's of 1975, they get it all up to 5 per cent.

Q. Do you consider preferred stock on the same basis as you consider the adjustment mortgage bonds?

A. Under this plan I would as soon have one as the other. They get whatever earnings there are.

Q. Was not that point raised at a former reorganization, and pointed out, and you then took a different position?

A. I think the situation was different.

Q. In what way was the situation different?

A. We thought the earnings would be much better.

Q. You then thought the reorganization plan was an excellent plan, did you not?

A. I think we thought it was as good a plan as could be devised at that time. The conditions were quite different.

Q. Now, what is the average income available for payment of interest on the funded debt for the years 1932, 1933, and 1934?

A. Now, I will state that in the way or in the terms it

is used in the plan, that is, considering the Terre Haute rental as a fixed charge. This will not agree with what you will find in the annual reports, because prior to this year the rent was a deduction before you came to the net available for fixed charges. You want to know for
4820 1932?

Q. 1932, 1933, and 1934, what was the average.

A. The net available for fixed charges for 1934 was $830,438; and for 1933—$9,687,976; and for 1934, $7,776,384.

Q. If that should be the average income for the next three years, will you have an available income to pay interest on funded debt under your new plan?

A. No, not quite sufficient.

Q. How much will you be short?

A. Well, the fixed charges under the plan, as it starts out, about 7½ million dollars, it would be about 1½ million dollars short, I think.

Q. So that you are starting out on a basis of a shortage under the average for the last three years, under your new plan?

A. Yes, and I think that is shown in the exhibit which I introduced.

Q. And is not that to be increased by the interest on $25,000,000 of bonds which you are going to issue under your new plan?

A. Well, of course, those bonds are issued partly to secure the loan of $12,000,000, and part of that interest is already in the fixed charges referred to under the plan.

4821 Q. I am calling your particular attention to page 12 of your plan, under 3, subhead (b), which provides for the issuance of 20 million dollars of principal amount. Now, what interest would that bear?

rectors. It has not been determined yet.

Q. So that that will increase your funded debt to the extent of interest on $25,000,000. Is not that true?

A. If and when that $25,000,000 is issued and sold.

Q. But you have a right to do so?

A. We will have a right to do so, assuming the Commission approves it.

Q. Where will the funds be available to pay that interest?

A. Under what assumption?

Q. Under any assumption.

A. Making the assumption that our revenues increase

large enough, we will have plenty to pay it. If I make the assumption you make, limiting it to the earnings of the last three years, we won't have money to pay it. It all depends on what our earnings are.

Q. Now, do you consider that you have a right to exchange mortgage bonds for stock, a complete issue?

A. I would think that in a reorganization you have a right to do anything that the Commission and the
4822 court will approve.

Q. Then why did you not exchange all of the mortgage bonds that you had for stock?

A. Because it would not seem to be an equitable thing or a sound thing to do, and if you put them all into stock, how would you maintain the priority rights they now have?

Q. Can you not give them preferred stock of different classes?

A. You mean a stock No. 1, 2, 3, 4, 5 and 6?

Q. Yes, with different rights.

A. If you could get all the bondholders to agree to that and give each their prior lien on the property and the earnings accruing on the line on which they have a prior lien, I suppose it could be done. I never heard of it being done.

Q. Have you ever given any thought to that kind of plan?

A. No, I never have.

Q. Have you got any guarantee that all the present bondholders will accept the present plan?

A. No.

Q. You still have to communicate with them and try to get them to accept the plan?

A. I think you are familiar, probably better than I am, with the provisions of the Bankruptcy Law, and there
4823 is a new one that has come out from Congress, providing that a certain portion have to assent.

Q. Now, is it not a fact that under your new plan of reorganization, you are not much improving the condition of the company, in so far as your fixed obligations are concerned, figuring the first mortgage, the general mortgage and the various other mortgages? You are not improving in any way its condition, excepting as to the adjustment bonds, which you are exchanging for stock?

A. The 5's of 1975 are an income bond. They are a fixed bond now.

Q. You do not consider that an obligation, an income bond?

A. You said it is not changing our fixed obligation.

Q. The income bond is not a fixed obligation?

A. It is contingent on interest. It is contingent on the income being earned.

Q. Is there not a final maturity?

A. The plan provides for the accumulation in ten years.

Q. So that in ten years from now the 50-year mortgage can be wiped out to pay the adjustment bonds which are now exchanged for preferred stock, as well as all other stock?

A. I will answer that. The plan provides that if ten years' interest accumulates on those bonds, they can do that. If the adjustment bondholders which get the
4824 new preferred stock and the present preferred and common stock, which get the new common stock, did not feel at the time that that condition should arise, that it was worth their while to assess themselves one-half year's interest, so as to prevent the full ten years accumulating, then the 50-year bonds could come in and foreclose, and, as you say, wipe it out, assuming that the courts confirmed and approved it.

Q. Why do you give such rights to the 50-year mortgage bonds, giving them such a chance so that they could wipe out all the adjustment bonds and all the stock of the company?

A. I do not think they have the power, as you have explained it. If you want to stay in the picture, and you think it is worth while to stay in, these stockholders can stay in by paying one-half year's interest, so that the ten years never accumulates. If they do not think it is worth while and the condition has arisen, then the 50-year 5's, because of the priority of lien certainly would have that right.

Q. Under the present earnings, would there be sufficient money to pay interest during the next ten years under the 50-year mortgage?

A. On the present earnings?

Q. Yes, sir.

4825 A. No, sir, there won't be on the present level of earnings this year, if that is what you mean.

Q. I mean on earnings of the past three or four years.

A. No, sir, there would not be.

Q. So that it is a foregone conclusion, if the road had an income similar to the past three or four years, the 50-year bonds can wipe out all the stock and all the adjustment mortgages?

A. As I have said before, if any of the holders of those securities do not think that the future holds out enough to warrant assessing themselves, assessing a sufficient amount to prevent the ten-years' interest accumulating; yes.

Q. With whom did you discuss the merits of this plan concerning the adjustment mortgage bonds?

A. I have not discussed the plan with anybody except the directors of my company, my president, and certain representatives of insurance companies, and savings banks.

Q. Have those insurance companies got both classes, the 50-year mortgage bonds and the adjustment bonds?

A. I think some of them do have.

Q. And are those adjustment mortgage bonds outstanding in the hands of the public, besides insurance companies?

A. Yes, sir, I think quite a lot.

Q. You do not know whether the public has the 4826 50-year mortgage bonds outstanding?

A. There is an awful lot.

Q. What is the percentage in the hands of the insurance companies and in the hands of the public?

A. There is quite a list of the 50-years, and if I recollect, there are over 16,000 holders, very widely distributed.

Q. Have you any limitation in your plan on the salaries of the executives of the railroad?

A. No, the board of directors can fix that.

Q. Have the salaries of the executives of the railroad been any less since 1928 than prior to 1928?

A. They have, but I will say that Mr. Scandrett, who is going to testify, is going to deal with that, and it will be answered later.

Q. You mean there will be complete testimony as to the schedule of salaries?

A. Mr. Scandrett will be prepared to answer my questions you want to know on that.

Q. Have the salaries of the executives been decreased in proportion to the decrease in the income during the past three or four years?

A. I would not be here if they had.

Q. I did not get the answer.

A. I say, I would not be here if they had.

4827 Q. Is it contemplated in the plan, in connection with the reorganization of the railroad, to decrease those salaries?

A. I have not the slightest idea what the new board of directors will do.

Q. Now you have suggested, or someone has suggested, the names of five directors or trustees.

A. Voting trustees.

Q. Voting trustees. Will those trustees have many duties to perform?

A. I do not know exactly what their duties are.

Q. Well, will they have to devote a great deal of time to the management of the railroad, to know whether it is managed properly as to the expenses and the income?

A. I believe they will have that power. They will elect the board of directors, as I understand it.

Q. They will be required to devote a great deal of time, won't they? Are they mere figureheads, or will they have to devote time?

A. No, I do not think they are figureheads at all. I would say certainly not.

Q. Have you considered the amount of time that each of the five directors can spare to this kind of business in connection with all their other duties?

A. No, I have not figured it out.

4828 Q. Take, for example, one of the directors named, Mr. Brown of Chicago. Do you know what spare time he has?

Mr. Swaine: If the director please; these gentlemen are not named as directors, but named as voting trustees.

Mr. Abrams: Voting trustees.

Mr. Swaine: Who are to name the directors. So that it must not be assumed they would devote the time that the directors must.

Director Sweet: I think the record is clear that these men suggested were to be voting trustees.

Q. (By Mr. Abrams.) Have you considered the many duties that Mr. Brown now has to perform?

A. I know he has a great many duties and I know he is a man of great capacity.

Q. Do you know what spare time he has to devote to this kind of business?

A. No, I have never checked upon that.

Q. Have you checked up on the other four members who are proposed to be voting trustees?

A. No, sir.

Q. Are they scattered in different localities?

A. Mr. Babb is in Wisconsin, and Mr. Brown is in Chicago. Mr. Ecker and Mr. Cortelyou and Mr. Benson I think are in New York.

Q. How do you propose that these voting trustees
4829 will be able to manage the property under the provisions of the trust, when they are so scattered and have different business to perform?

A. People do travel these days, and the time is getting shorter and shorter between points.

Director Sweet: At this point we will be in recess until 1:30.

Mr. Hoffman: Mr. Director, before we recess, may I read into the record—

Director Sweet: No, we are in recess now.

Mr. Hoffman: Thank you, sir.

(Whereupon, at 12:25 o'clock p. m., a recess was taken until 1:30 o'clock p. m. of the same day, Tuesday, August 6, 1935.)

4830 Afternoon Session.

The hearing was resumed at 1:30 o'clock, p. m.

Director Sweet: You may proceed.

WILLIAM W. K. SPARROW testified further as follows:

Cross-Examination (Continued.)

Q. (By Mr. Abrams.) Mr. Sparrow, do you take credit for this plan?

A. No, I cannot claim that distinction.

Q. Have you drawn it?

A. I did not draw it. I participated in it, but I did not draw the plan.

Q. Who is the person who has actually been responsible for the adoption of the proposal of this plan?

A. Who is responsible for the adoption of it?

Q. Yes.

A. I suppose the Board of Directors would be, because the plan was voted by the Board of Directors.

Q. Who particularly in the Board of Directors?

A. I think it was all of the Board of Directors who attended the meeting except one, the meeting at which the plan was adopted.

Q. Did someone propose it to the Board of Directors?

A. Yes, I assume it was proposed.

Q. Who is the one who did it?

4831 A. I cannot recollect. The minutes would show.

Q. What is your best recollection?

A. I have not a recollection of who actually made the motion.

Q. Did you participate in the meeting when the plan was proposed?

A. Yes, I was there.

Q. Who proposed the plan at the meeting?

A. I cannot recollect.

Q. Now, did you participate in conferences before the official meeting of the Board of Directors where the plan was discussed?

A. Yes, I participated in many meetings and many conferences.

Q. Who sponsored that plan in the conferences in which you have participated?

A. The plan was a growth. It was not just produced and sponsored, but was a gradual development as a result of discussions not only among ourselves and our Board but the large holders, who were met with, from eighteen or nineteen groups.

Q. But you do not know of any particular person on the Board of Directors who proposed it?

A. I do not recollect at the meeting who proposed it, whether it was the President or who proposed it. I 4832 do not recollect. It was a formality.

Q. In your plan you state on page two that the Board of Directors of the Railroad company believed the plan equitably preserves the existing priorities and the rights of the various classes of securities. Now, I want to ask you whether at the present time there exists a priority in favor of the adjustment bonds as against the stockholders?

A. Yes.

Q. Do you not, by your present plan, discriminate as to them, by placing them in a lower grade?

A. I do not think we do. Their priority is preserved. The new preferred stock has priority as to assets over the common.

Q. Do you class the preferred stockholder in the same position as a creditor?

A. I do not class him in the same position as a bondholder.

Q. Will you answer my question?

The Witness: Read the question, Mr. Reporter.

(Question read.)

The Witness: What class of creditory or kind of creditor? Any creditor?

Q. (By Mr. Abrams.) Any creditor.

A. I do not know that I am legally qualified to an-
4833 swer that question as to what his classification is in a bankruptcy proceeding, as to any other creditor.

Q. Did you know that when you made that statement in your plan?

A. That would not change my opinion as to the statement in the plan which you have just read, that the Board of Directors believe that the plan equitably preserves the existing priority and rights of the various classes of securities. I believe it does preserve the exacting priority of the adjustment bondholders.

Q. You know what "priority" means, do you not?

A. They become prior to the person next to them. In other words, the adjustment bonds have a right to the preferred stock, and when they get that they will have a right that the present and preferred common stock which gets stock does not have.

Q. You are a stockholder in some companies, are you not?

A. Yes, one or two.

Q. Do you know whether or not those stockholders owe money to the creditors?

A. That the stockholders owe?

Q. That the companies owe money to the stockholders?

A. Yes.

Q. Do you know whether there is a distinction between owning stock in a company or being a creditor of a
4834 company?

A. I am not familiar with the legal distinctions as to that?

Q. You will say you do not know any such distinction?

A. I will say I am not qualified to pass on the legal distinctions.

Q. And you want this Commission to understand that you, who have been testifying here yesterday and today and giving all the details today, do not know the distinction between a creditor and a stockholder? You want them to understand it that way?

A. As I have stated it, yes.

Q. How did these adjustment mortgage bonds get to the public?

A. Through the last reorganization.

Q. What consideration did the public pay for those?

A. As I recollect it, there were 228,000,000 of the bonds of the old Chicago, Milwaukee & St. Paul Railway, and, as I recollect it, they received 80 per cent in adjustment bonds and 20 per cent in the 5's of 1975. That is my recollection.

Q. So that you had exchanged the obligation of the bondholders 80 per cent to adjustment bonds, and now under the new plan you are relegating them to stockholders?

A. That is correct.

4835 Q. And you think it is fair and equitable?

A. I think the priority is preserved, and I think that in the conditions in which the company finds itself, that is fair and equitable.

Q. Now, are you not placing the common stockholders in a better position than the preferred, whom you are giving new stock for the adjustment bonds to the extent of 5 per cent?

The Witness: Will you read the question, Mr. Reporter?

(Question read.)

The Witness: Do you mean placing the present common stockholders in a better position?

Q. (By Mr. Abrams.) Yes.

A. Than whom?

Q. Than the preferred?

A. Than the present preferred?

Q. Yes.

A. I do not think you are placing them in a better position.

Q. Are you not giving them 5 per cent ahead of the preferred stock?

A. The new common stock, no.

Mr. Swaine: There is obviously some misconception of the plan.

Mr. Abrams: I call your attention to page 8, para-
4836 graph 8, and particularly to the words "participate equally per share in dividends with the common stock, after the latter has received 5 per cent of par value of the dividends." What do you mean?

The Witness: The preferred stock first gets the five per cent.

Q. (By Mr. Abrams.) Does the word "latter' apply to the preferred or common?

A. Are you reading from page 8?

Q. Page 8, paragraph 8. To whom does the word "latter" apply?

Mr. Swaine: I suggest, Mr. Abrams, instead of looking at that, you look at page 14, where the new preferred stock is more fully described.

Mr. Abrams: I want to get this explanation as to whether it is a mistake or not.

Mr. Swaine: It is not a mistake. They get 5 per cent preferred dividends and they participate after the common stock gets five per cent.

Mr. Abrams: That is exactly what I am trying to get.

Q. (By Mr. Abrams.) So that you are going to pay the 5 per cent common ahead of the preferred?

Mr. Swaine: No.

The Witness: No, I do not understand that at all.

Q. (By Mr. Abrams.) Will you explain this paragraph?

4837 A. The adjustment bonds get preferred stock. They will receive a 5 per cent dividend, if it is earned and declared by the Board. If they get that, they will be in exactly the same position as if they got five per cent interest on the present bonds except to the extent that they will be getting a 5 per cent dividend on forty-seven million odd on back interest for which they received the new preferred stock—

Q. May I ask—

A. Will you let me finish the answer to the question?

Q. I thought you had finished.

A. No, I have not.

Q. Go ahead.

A. After they have gotten that 5 per cent, then after the new common has received 5 per cent on some forty-

seven million new common, then the preferred and the common will participate in what is left after that, if there is any.

Q. Now, you intend to give, in lieu of the adjustment bonds, preferred stock under a voting trust. The gentlemen who were mentioned as the voting trustees, are they nominated by the beneficiaries of the adjustment bonds or by some other persons?

A. I do not know who nominated the voting trustees.

Q. Are the persons which were suggested inter-
4838 ested in any other class but the adjustment bonds?

A. I cannot answer that question.

Q. Now I have heard the statement made that they were suggested by some insurance companies. Are those insurance companies interested in any class that is prior in right to the adjustment bonds?

A. Oh, yes, most of the insurance companies, and I imagine all of them.

Q. They are going to name the voting trustees on behalf of the adjustment bonds. Is not that right?

A. They are naming the voting trustees in behalf of all the securities, just as much on the 5's of 1975 as the adjustment bonds.

Q. If a trustee is named by a person who has a superior interest to that of the beneficiary, who will the trustee represent and do you think such a trustee can properly represent the beneficiary?

A. I think the voting trustees can properly represent the security holders they do represent under this plan.

Q. Do you not think there is a conflict of interest here, when a person is named as trustee by a superior class to represent a beneficiary of an inferior class?

A. The superior class, as you call it, is making this sacrifice, and during that period they ask for a voting trust to protect their interest.

4839 Q. So who will protect the beneficiaries?

A. The Board of Directors.

Q. Who will elect them?

A. The voting trustees.

Q. So that the voting trustees, who are placed by the superior interests appoint the directors and will at the same time represent the beneficiaries who have a larger interest?

A. And if the superior interest had not agreed, where

would the other interests be which you are thinking of? If the 5's of 1975 foreclosed the property, they could do it, and there would be no need of representing the preferred and common stockholders. They would not be in the picture to be represented.

Q. Does this equitable and fair plan provide in fact for the representation of adjustment bonds?

A. They give their voting rights to the voting trustees.

Q. You understand by that that the voting trustees will vote in favor of the superior interests?

A. I think that they will elect directors who will properly manage the property to the interests of all security holders.

Q. Can you give any reason why you are exchanging the adjustment mortgage bonds for preferred stock?

A. The reason is to remove the interest obliga-
4840 tion from the company and give them a security which will maintain their present priority and enable them to get the earnings, if there are any.

Q. This interest obligation is not a fixed obligation, is it?

A. It is not a fixed obligation until the bonds mature.

Q. When do the bonds mature?

A. The year 2000.

Q. So that after 2000 you have no fixed liability of interest?

A. No, but the credit of the company is considerably hurt by having a large deficit of accumulated interest piling up.

Q. Is not your new company going to be hurt by accumulating interest on the 50 year mortgage up to 10 years, when they can foreclose?

A. If that happens. If there are no earnings, so that the interest accumulates for ten years and, as I said before, the security holders junior to them think the thing is so hopeless as to permit that full ten year maturity, then you will have another reorganization and your adjustment bonds and common stock will not be in the picture.

Q. In the last reorganization you have sold to the gen-
eral public stock to the extent of $75,000,000, did you
4841 not?

A. I think it was about $70,000,000.

Q. And if this reorganization is adopted, the superior interests can wipe them out by foreclosure?

A. They could wipe them out now without any.

Q. Now if you will exchange the adjustment bonds for stock in the company, will you be in a position to assess them in the future as stockholders?

A. No provision in this plan for any assessment on stockholders.

Q. But you would have a right, would you not?

A. To assess them?

Q. Yes.

A. No, I do not think so.

Q. You would have that right in a reorganization ten years from now?

A. If we had a reorganization ten years from now, as I say, there would not be any necessity for that reorganization if the new preferred stockholders thought it was worth while to assess themselves one-half year's interest.

Q. You have a contingent interest to the extent of about one-third on the 50 year mortgage non-cumulative. Is that right?

A. I do not understand the one-third.

4842 Q. You have a contingent interest upon but one third of the 50 year mortgage?

A. No, the fifty year bonds are all contingent interest. The general mortgage bonds are two-thirds and one-third contingent.

Q. Is that cumulative or non-cumulative?

A. That is cumulative.

Q. It is cumulative?

A. Yes, sir.

Q. So the general mortgage bonds are also sufficient to wipe out the 50 year mortgage as well as all other assets? Is that correct?

A. If we can conceive that the earnings of the company run for ten years so that the one-third interest of the general mortgage is not paid, I suppose that also is correct.

Q. Now have you given any thought in your plan to the decrease in the operations of the company, in the expenses of operation?

A. We have given thought to that all the time.

Q. To what extent did you give thought to the decrease in the executive salaries?

A. I do not know that any special thought has been given that at this time.

Q. Did you not consider that when you consid-

4843 ered a decrease in the expenses of operation?

A. No, I have not given any consideration to that.

Q. What item did you consider?

A. If you did not pay them anything, it would not amount to anything as far as affecting the earnings of the company and making earnings available for the adjustment bonds.

Q. You mean it would not cut any figure, whether you decreased them or not?

A. No, it would not.

Q. What is the highest paid salary, highest official in the company now?

A. As I recollect it, it is $48,000.

Q. Is that the salary of the president?

A. I believe that is the present salary of the president.

Q. How many vice-presidents are there?

A. We have a vice-president of finance, myself; we have a vice-president of operations; that is two; a vice-president of traffic, which is three. Then we have a vice-president out in Seattle, four, and we have a vice-president in New York in charge of our office in New York.

Q. Do you know approximately what are the total salaries of the executives?

4844 A. Do you mean of those I have just named, or all of them?

Q. Just those five?

A. Just those five?

Q. Yes, sir.

A. My salary is $27,000. I think the vice-president of operations—these are just my recollection—is about $25,000, and I think the vice-president of traffic is around $23,000, and the vice-president in New York I think is $12,000, and the vice-president at Seattle, I am not sure whether he is $16,000 or $18,000.

Q. How do these salaries compare with the salaries paid to the same officers in the years 1928 and 1929?

A. I just stated before that that testimony would be covered by Mr. Scandrett, who has the evidence in more detail than I have.

Q. Do you not know it?

A. I cannot recall. I went from $40,000 to $27,000, and the president went from $75,000 to $48,000.

Q. You mean June 1928 up until now? Is that right?

A. No, I think I was not receiving $40,000 in 1928, but some time in 1929. The highest salary I have been paid was $40,000, which has been reduced to $27,000; and the

highest salary paid the president was $75,000, and it has been reduced to $48,000.

Q. Was that $75,000 received in 1928 or 1929, or
4845 before that?

A. It was not at the beginning of 1928. I am not sure whether it went into effect the latter part of 1928 or the beginning of 1929.

Q. Now calling your attention to the years 1928 and 1929, when your company earned approximately $30,000,000 as income available for interest, why is it that during those years you have not replaced the equipment on some of the railroad property which was brought out this morning, especially on the Milwaukee and Northern?

A. There was none—this is for replacing the equipment of the Milwaukee & Northern? We had equipment of the system that was being used there. I do not recollect that the vacancies we referred to occurred in 1928 and 1929. They occurred in subsequent years. There is a pretty large amount of equipment that was retired during the period prior to 1928 and during 1928. The equipment retired in 1928 was not subject to the provision of replacement, on which became effective January 1, 1929. I think I am correct in stating that the great bulk of the replacements, which there was a default, occurred subsequent to 1929.

Q. Now do you consider, in proposing this plan as fair and equitable, that any property which the debtor once owns should be subordinate to any of the rights of
4846 the creditors?

A. That any of the property which the debtor owns should be subordinated to the rights of the creditors?

Q. Yes, sir.

A. What kind of creditors?

Q. All kinds.

A. You mean bondholders?

Q. Yes.

A. Yes, it should be subordinated to the rights of bondholders.

Q. Does your company own the first and refunding mortgage?

A. I do not know what you mean by "owning the mortgage".

Q. Do you own the bonds?

A. We retain the mortgage, somebody else owns the bonds.

Q. Does not your company own the bonds and pledge them as security? Was not that your testimony?

A. We pledged certain bonds; yes, sir.

Q. Your company owns the bonds then?

A. We own them subject to the pledge.

Q. But you have an equity above the pledge, have you not?

A. I hope so.

Q. Does your plan propose to subordinate your equity in those bonds to that of the creditors?

A. I do not know that I understand your question.

4847 Mr. Abrams: Will you read the question, please, Mr. Reporter?

(Question read.)

The Witness: It proposes to leave the bonds pledged with the public we borrowed the money on until we paid it off, and when we get that done, the bonds will be returned to our treasury and they will be available for the benefit of creditors.

Q. (By Mr. Abrams.) I am asking you whether you propose under the plan to subordinate your equity in these bonds to that of the creditors of the company?

A. I have answered the question to the best of my ability, I do not know what our equity is until we have paid off. The bonds are pledged to secure certain loans, and until we have paid off those loans, we cannot get the bonds.

Q. Let me put it more specifically to you. After you have adopted this plan, which changes the adjustment bondholders to stockholders, and if you pay off your loan to the Reconstruction Finance, you will then obtain back your bonds secured by the first and refunding mortgage?

A. We will get back—

Q. Under your plan, will those bonds be ahead of the interest on the adjustment mortgage bonds?

A. If they are sold, they will. As long as they

4848 stay in the company's treasury they will not. There will be no interest on them.

Q. Do you think it is a fair plan to do so?

A. Of course I do.

Q. What other mortgage bonds has your company which it is the owner of and pledged as security?

A. It has $11,212,000 of its general mortgage bonds pledged with the R. F. C., and it has some two million dollars to two million and a half dollars pledged with the Federal Emergency Administration of Public Works.

Q. Can you see any reason why, under a fair and equitable plan, your equity in those bonds should not be subordinated to the rights of creditors, including the owners of the adjustment mortgage bonds?

A. I do not know how you would do it.

Q. The only reason that you do not do it is because you do not know how to do it?

A. If I were the Reconstruction Finance Corporation and had those bonds pledged to secure a certain loan, I do not know that I would permit you to be going and pledging their equity in them to somebody else, until I was paid off.

Q. I want to make myself clear. I have not asked you you anything about reducing or changing the obligations of the R. F. C. I am asking about your equity, sub-
4849 ject to the law. Are you willing to subordinate that?

A. To whom?

Q. To the rights of the adjustment mortgage bonds and all other creditors.

A. I am sure I do not understand that. I just do not understand.

Q. It is too difficult to understand?

A. It is too deep for me. All I know is that if the loan is paid off, the bonds will come back into the treasury of the company, and they will be there for any lawful, corporate purposes, for the making of additions and betterments, or any improvement, such as the adjustment bonds, if the Commission approves them.

Q. Do you expect the average purchaser of your securities to understand this plan, and that it will not be too deep for them, and yet the question is too deep for you?

A. I expect a lot of them are more intelligent than I am and would be able to understand it.

Q. What provision is there under your plan for the appointment of voting trustees to represent the general public, that have invested money in your company?

A. The plan speaks for itself as to what the voting trustees are to do, and whom they represent.

Q. Do you know of any provision in the plan which
4850 will give protection to the public?

A. I do not know of any provision in the plan for voting trustees to protect the public at large.

Q. Is not this protection which you give them a protection for the superior interests that are controlled by some of those finance companies, insurance companies, and others?

A. It is a provision, in view of the sacrifices that the holders of the 5's are making, to allow the very people, the adjustment bonds that you are representing, to stay in the picture at all.

Q. It is a mere favor?

A. It is what?

Q. It is a mere favor?

A. No, it is not any favor. It is a right. It is a right I would insist on if I were the holder of 5's of 1975.

Mr. Abrams: That is all.

Mr. Swaine: No redirect.

Q. (By Examiner Boyden.) Mr. Sparrow, referring to your Exhibit No. 76, which takes up the net valuation of various properties of the Milwaukee, I believe it shows that the dates of valuation were June 30, 1918, for the Milwaukee, and 1915 for the Gary, and 1916 for the Terre Haute.

A. Yes, sir.

4851 Q. In working out your figures, have you given any consideration to a possible change in the condition of the properties of the railroad between the dates of those valuations and the present time?

A. No, I think not. As I understand the way this was prepared, we have followed, as I stated, the decision in the St. Louis and O'Fallon Case, which has been to add the additions and betterments made and to depreciate them down to the conditions of the property as of date of valuation, substitute additions and betterments made between June 30, 1914 and valuation date at actual cost depreciated, in lieu of the valuation figures.

Q. But with respect to the property that is not changed in any way. That is, there are no additions and betterments with respect to it, if there is a change in the condition of that property, it would affect the investment?

A. You mean to say, if the property had depreciated more?

Q. That is right, if the standard maintenance had not been kept up.

A. If I understand your question, it would be that the property other than the property to which additions and betterments have been made—

Q. That is right.

4852 A. —as of June 30, 1935, was in a lower condition than it was on June 30, 1918, there would be more depreciation to take out of these figures?

Q. And you made no study of that?

A. No, sir.

Q. Mr. Sparrow, you were testifying yesterday with respect to the earning power of the lines securing the mortgages of the first and refunding bonds and the 50 year bonds. I believe you said that the revenues accruing to the Milwaukee from traffic on those lines amounted to five million odd dollars. Is that correct?

A. That was the eastern lines.

Q. That was for the year 1931, I believe.

A. That was for the year 1931.

Q. Do you have that figure there now?

A. Yes. The division of revenues accruing to the eastern lines on the business interchanged between east and west was $5,839,000.

Q. Do you have the same figure for 1930?

A. It was $8,309,000 in 1930.

Q. How did you determine the allocation of revenues between the lines west and the Milwaukee proper?

A. I explained that in my direct testimony, but I will explain it again. We first of all took a mileage prorate, dividing on Mobridge. We then ascertained what a
4853 mileage prorate on Minnesota Transfer, the relation of that to the division that is in effect now between lines like the Northern Pacific and the Milwaukee, and we found how much greater that division was than the mileage prorate, and then we went back and increased the mileage prorate by the corresponding percentage, which gives the lines west a little bigger division than a mileage prorate.

Q. Have you computed operating expenses allocable to the revenues accruing to the Milwaukee proper from the traffic from the lines west?

A. You mean the expenses on the lines east?

Q. Yes.

A. No, I have not attempted to do that. You mean to say, what part of the expenses of the eastern lines would be incurred in handling that business which was interchanged?

Q. Yes.

A. No, I have not done that.

Q. Would you care to express an opinion on that?

A. I would take the freight operating ratio of the eastern lines.

Q. I believe that is the same basis that you used in computing the earnings of the Milwaukee & Northern?

A. Yes, I took the system freight operating ratio.
4854 As a matter of fact, I think that had that amount of business been transacted by the eastern lines, all in operation, that the out-of-pocket expenses would be less in that we could handle that amount of business, a certain amount of your maintenance of way not being affected by the amount of business. And it is generally assumed two-thirds of it is due to weather and other conditions.

Q. There would be a terminal charge in most cases which they would not have on the Milwaukee proper. Is not that so?

A. A terminal charge?

Q. Traffic moving from the Milwaukee & Northern on Milwaukee lines and moving on to the line or lines east?

A. You would have a terminal charge at Chicago or other places.

Q. There might be a terminal charge on the commodity coming off of the line west, at the southern end of that line, and that would not be reflected in your expenses?

A. Not in the eastern expenses; no, sir. That would be in the western line's expenses.

Q. You think that you should use in a study of that kind the operating revenue for the Milwaukee proper, do you?

A. As to the Milwaukee & Northern, I think it was an excessive figure to use. I am talking now of the system's revenues obtained from business moving to and from
4855 the Milwaukee and Northern to which I applied the system operating freight ratio. I think the actual cost to the Milwaukee was less than that.

Q. Are you familiar with the details of the maintenance of the roadway and truck and equipment of the Milwaukee during recent years?

A. Just reasonably so. I am familiar with it from the side of seeing what is done in the way of expenditures.

Q. Is the Milwaukee maintaining all the property now that was in service in 1929?

A. No, I would not say it is maintaining all the property. Some of it has been retired. We have got rid of over 200 miles of double track and we have retired branch lines.

Q. Is there any property that it is not maintaining that has been retired?

A. That is not being maintained?

Q. Yes, sir.

A. I do not think of any property, of any consequence, that is not being maintained. We are running our trains now faster than we ever ran them. Our track is in good condition. We are having no accidents, so far as our equipment is concerned. Taking the percentage of locomotives examined by the Interstate Commerce Commission Bureau of Locomotive Inspection, that were ordered
4856 out of service, in the case of the Milwaukee in 1931 it was 4 per cent, in 1932 it was 4.6 per cent, in 1933 it was 6 per cent, and in 1934 it was 6 per cent. Now, the Northwestern shows figures for those same years of 7 per cent, 5.7 per cent, 9 per cent and 11.7 per cent. The Burlington figures ran about 6 per cent.

Q. Do you know whether the Milwaukee has any equipment now which is not in service and not in shape for service, which has not been retired from the equipment account?

A. I know of no equipment now that is not in shape for service that has not been retired or is not on the program for retirement this year.

Q. Could you furnish for the record a statement of slow orders, and derailments on the Milwaukee during the entire life of this corporation, the debtor corporation?

A. From 1928?

Q. Yes.

A. I think we could.

Mr. Swaine: That is, slow orders and derailments, 1928 down to June 30th?

Examiner Boyden: Yes.

Mr. Scandrett: What do you mean by "slow orders," Mr. Boyden? You might have a temporary washout and have a slow order for a week or so.

Examiner Boyden: Can you indicate at the present
4857 time what the slow orders are caused by?

Mr. Scandrett: I know we had some heavy rains yesterday and will probably have some slow orders as a result of those.

Mr. Swaine: For what period?

Examiner Boyden: By years.

Mr. Swaine: If we have a slow order for one day, do you want that, or just for an extended period of time?

Examiner Boyden: For any time.

Mr. Swaine: Mr. Gillick, the vice president of operations says they have no record of that.

Examiner Boyden: Do you have a record of the derailments?

Mr. Gillick: They have a slow order for the effects of a derailment, or the effects of a washout, but it is fixed up right away and the limitation, or whatever it is, is removed.

Examiner Boyden: You have a record of those, do you not?

Mr. Gillick: We would have to get it from each train dispatcher on the railroad. I have a note in my pocket of three washouts yesterday, one of which is quite a terrible thing, taking out the abutments of a particular bridge. Until we get that bridge repaired, a slow order will be on it.

4858 Examiner Boyden: Will you please furnish whatever information you can on that, Mr. Swaine?

Mr. Swaine: Yes, sir.

Q. (By Examiner Boyden.) Mr. Sparrow, one of your exhibits contained a statement of equipment subject to equipment trusts, or information relating thereto. Is there any equipment now owned by the Milwaukee which is not subject to equipment trusts?

A. Oh, yes, quite a considerable amount.

Q. Can you give us the same information with respect to that equipment?

A. I think you will find, Mr. Boyden, that perhaps what you want is in Exhibit No. 73, in Appendix A. Have you got that exhibit? I will show it to you and see if that gives the information you desire. You will see the general mortgage, how much is under equipment trust and how much is free.

Q. (Examining Exhibit 73.) This does not give the depreciation on it for the price paid for it.

A. That is an exhibit on some information which you asked for. Is not that something on which we are still working, Mr. Lodge?

Mr. Lodge: We are working on the statement of the condition of the equipment, yes, sir.

The Witness: Did it not ask what the original 4859 cost was of all the equipment?

Mr. Lodge: The original cost and the depreciation was requested for all.

Q. (By Examiner Boyden.) Will you supply that?

A. That one is in course of preparation, Mr. Boyden.

and I think was on the Director's list and has not been completed yet.

Q. You intend to supply that, though?

A. Yes, sir.

Q. Will you tell for the record the purposes for which the loans were made which are shown in Schedule 271 of Exhibit No. 78, please? Those are the R. F. C. loans, the R. F. C. and the Public Works Administration loans.

A. I do not have the information here but Mr. Scandrett is covering that.

Q. (By Examiner Walsh.) These equipment vacancies, the equipment vacancies you mentioned, both on the Terre Haute and the Milwaukee, were they all chargeable against the present company, that is, against the Pacific Company?

A. Against the Pacific Company?

Q. Yes, sir.

A. They are an obligation of the Pacific Company; yes, sir.

Q. Did not some of the Terre Haute vacancies 4860 occur before the Pacific Company began operations?

A. I am not sure whether there were any vacancies left or which were not cured before the Pacific Company took over or not, but if there are, they become an obligation of the Pacific Company, I take it.

Q. Then we would have a figure of five million dollar vacancies in Terre Haute equipment, and that represents an obligation of the Pacific Company to the Terre Haute Company?

A. Yes, under the provisions of the lease.

Q. What do you allow the Terre Haute Company in the plan for that $5,000,000?

A. Nothing.

Q. That is waived?

A. The plan provides it is to be waived by the Terre Haute Company.

Q. Can you do it, if there is a minority dissenting? Can you require a minority to waive that?

Mr. Swaine: You are asking a legal question, if you will allow me to answer.

Examiner Walsh: I would be glad to have you.

Mr. Swaine: I think we can modify the lease as one of the obligations, with the consent of two-thirds of the Terre Haute bondholders. That presented a very difficult

problem. If you will look on page 9 you will see how
4861 we dealt with it. We dealt with it as if these several classes of bondholders had a direct relationship to the St. Paul Company, as the beneficiaries of a covenant contained in the lease, and we provided that if the classes became bound in respect of that right against the St. Paul, in the corresponding right against the Terre Haute, and agreed with us not to enforce their rights against the Terre Haute, because obviously we cannot reorganize the Terre Haute in this proceeding as it stands now, then the company would not elect to disaffirm the lease. In other words, if, as the lessee under the lease, we get what is in effect a covenant of creditors of the lessor not to sue the lessor, we are satisfied, even as between the lessor and the creditors of the lessor, the lessor itself has not got a covenant not to sue under the lease.

Examiner Walsh: Mr. Swaine, if you have got any citations along that line, we would be glad to have them in the brief.

Mr. Swaine: Section 77 has been too recently enacted to have any precedents on it.

Examiner Walsh: There are cases on composition, though.

Mr. Swaine: I think that is a little different than composition, because under the old bankruptcy act, in
4862 which compositions were involved, of course you could not affect a lease at all. A claim under a lease was not a provable claim. So that you could not affect it affirmatively; you could not affect it. But the present Section 77 affirmatively provides that claims of this sort are provable in a 77 proceeding.

Q. (By Examiner Boyden.) Mr. Sparrow, will you turn to Schedule I in Exhibit No. 78?

A. Yes, sir.

Q. The first item in that schedule refers to payrolls, unpaid checks, paymaster's drafts and time drafts as of May 31, 1935, covering payrolls for services performed in May 1935 and prior months. What prior months are covered?

A. I will tell you what I think it is. I think that has in it part of that pension fund contributed, collected from employees, which has not been returned. Am I correct in that, Mr. Wilson?

Mr. Wilson: I did not hear it.

The Witness: The Schedule I of the balance sheet shows

unpaid checks, paymaster's drafts and time drafts as of May 31st, 1935, covering payrolls for services performed in May 1935 and prior months, $4,489,335.86. Mr. Boyden has asked what are the prior months. Of course, there are always some pay checks which are not presented,
4863 which you cannot deliver until the employee comes up to get his check, but, I say that I think part of that figure represents the contributions collected under the pension fund, which had not been returned. Am I right?

Mr. Wilson: That is right.

Q. (By Examiner Boyden.) Does that cover all the items which are prior months' items?

A. Because the employee did not come to get his check or the pension contributions collected which had not been returned or were not returned on that date.

Q. I have the same question with respect to the next item of unpaid vouchers which state that they apply to May 1935, and prior months. What prior months are involved in that item?

A. That generally represents the invoices due for materials and supplies which have been furnished, some of which have been covered by vouchers already issued and paid and other invoices and vouchers in the course of preparation, and based on the invoices in the course of audit.

Q. Is there anything in there which applies to more than six months prior to that date?

A. If that is the purpose of your question, no, sir, we have no delayed vouchers. The vouchers, as soon as
4864 they reach the Treasurer's office have been sent out for payment. We have none. The only exception to that was that we got or had ties delivered early this year, which we did not want to use until July and August, and we made arrangements with the tie contractors that while they delivered the ties we would not pay for them until July. Of course, the invoices came in and there were some $900,000, which was all paid off in July. You might classify that as a delayed voucher, although it never got into the form of a voucher.

Q. When were the ties delivered?

A. I think starting in April, May and June. They have all been cleaned up since and have all been paid off. But that figure does not represent any delayed vouchers. There are none.

Q. And the last item on the page "Personal Expense

Draft", $46,460, relating to May and prior months, what prior months are covered by that item?

A. I am afraid I cannot answer that. I will have to get our comptroller to answer that question.

Mr. Swaine: Mr. Wilson's recollection is that the amount involved for months prior to May is negligible, and it would be in regard to some officer who turned his expense account in late.

Director Sweet: Mr. Sparrow, in looking at your
4865 Exhibit, which is the traffic density chart—I have forgotten the number—

Mr. Swaine: 77.

Director Sweet: Exhibit No. 77, it is apparent that there are a good many lines on which the traffic density is relatively small. We prepared a list of some of the lines showing the termini of those lines, and I think in all cases the net ton miles are less than 150,000 a year, and if I gave you this list I wonder if you could indicate as to whether or not you have given consideration to the question whether all those lines are profitable from the point of view of the Milwaukee or otherwise? (Handing paper to witness.)

The Witness: I could not tell you from looking at this list whether we have given consideration to all of them. I know we have given consideration to a great many of these branch lines and have made application for abandonment where we found that even though they did not pay their own expenses that the haul on the system justified their retention.

I would be glad to take this list.

Director Sweet: Let us identify that list as Exhibit No. 98, and then if you will take a copy of it and examine it, perhaps you can give us the answer later.

The Witness: I would be glad to do that, Mr. Director.

(EXHIBIT NO. 98 received in evidence.)

4866 Director Sweet: Do you consider that the railroad is in as safe and efficient operating condition now as it was in 1928 and 1929?

A. If I am qualified to answer that, I think that it is in as safe and efficient condition. I do not mean to say by that, that I think all the property has been maintained to the same degree, but I think the track is in a safe and efficient condition. We may have run down on the number of ties that we have replaced, and we are making it up. For example, this year we are putting in one million more

ties than last year, and more ties than in any year since 1929.

Director Sweet: If the road were to have the recovery of business traffic and earnings that you contemplate, or that are assumed, if you want to put it that way, in your Exhibit No. 96, do you know, or can you say whether or not it will be necessary to increase somewhat your maintenance expenditures above the amounts that have been expended in the past three or four years?

A. We could not increase them above the expenditures of the past three or four years because we increased them to eighteen million and the expenditures of the past few years have ranged from ten to twelve to thirteen million. In arriving at that figure I did it after, as I stated in my direct testimony, consultation with our chief en-
4867 gineer, Mr. Penfield, who was formerly our engineer of maintenance of way, and also consulted with our vice president, Mr. Gillick, and reached the conclusion that if we could obtain $18,000,000 a year, commencing the first of next year, that we could adequately maintain the track with proper maintenance of way for that sum of money, for the volume of business that the exhibits indicated.

Director Sweet: Do you recall your expenditure for maintenance of way and structures and equipment in 1928, 1929 and 1930?

The Witness: Yes, sir, I will give them to you, Mr. Director. The maintenance of way expenditures in 1928 were $27,403,000; in 1929, $27,885,000; in 1930, $22,354,000; in 1931 they dropped to $17,041,000; and in 1932 to $13,446,000; in 1933 to $10,162,000; and in 1934 to $12,851,000.

Our maintenance of equipment, other than depreciation, just to repair, other than depreciation and retirement charges, in 1928 was $23,993,000. That was 14.1 per cent of our revenue. In 1929—$24,649,000. That was 14.4 per cent. In 1930—$20,968,000. That was 14.7 per cent of our revenue. And in 1931—$14,608,000, 13.1 per cent. In 1932—$10,868,000, practically $869,000, 12.8 per cent.
4868 In 1933—$9,906,980, say, $9,907,000, 11.6 per cent. And in 1934—$10,776,000, or 12.3 per cent.

Director Sweet: Now do you contemplate for 1940, not including depreciation, expenditures of about $34,300,000 for maintenance? Is that right? That is according to Exhibit No. 96.

The Witness: The maintenance of way, $18,000,000.

Director Sweet: And equipment $16,000,000?

The Witness: Equipment, $16,300,000 which is 13½ per cent of the revenues.

Director Sweet: It amounts to about $34,300,000?

The Witness: That is right, sir.

Director Sweet: According to the figures you gave us, you expended in 1928 about $50,000,000 a year?

The Witness: Yes, sir.

Director Sweet: In 1929 about $51,000,000 a year?

The Witness: Yes, sir.

Director Sweet: And in 1930 around $48,000,000, and so forth?

The Witness: Yes, sir.

Director Sweet: And 1931 about $31,000,000?

The Witness: Yes, sir.

Director Sweet: And in 1932 about $24,000,000?

The Witness: Yes, sir.

Director Sweet: In 1933 about $20,000,000 and in
4869 1934 about $24,000,000?

The Witness: Yes, sir.

Director Sweet: In 1933 about $20,000,000 and in 1934 about $23,000,000?

The Witness: Yes, sir.

Director Sweet: In these years when you had considerably more business than you had for the past four years, your expenditures for maintenance considerably exceeded the amounts you are estimating now for the year 1940, for instance. Do you think it is sufficient under those conditions, in view of the fact that for the past four years the expenditures have been considerably less than they were prior to 1931, and considering also the fact that you estimate that you will expend considerably less in 1936, 1937 and 1938, than you did in those years, in what we may call boom traffic years?

The Witness: In treating the maintenance, I think you have to treat the maintenance separately from the maintenance of way. That maintenance, of course, has a more direct relationship to the business that you are handling, and while those expenditures were much higher in those years, the percent of the gross revenue is not materially different from what we have used in this illustration. As you say, in 1929 we spent $24,600,000 in maintenance of
equipment, which was 14.4 per cent of our revenue.
4870 Now in 1940 we are only spending $16,300,000 but
that is 13.5 per cent of our revenue. It is in line with the proportion of revenue, the ratio.

Director Sweet: I wonder if there is a sufficiently definite or fixed relation between revenues and maintenance expenses to make that sort of a comparison of any value.

The Witness: I think there is, because it shows a considerable consistency, not only on our railroad but on other railroads. Take the Burlington, for example. In 1928, when we had $23,993,000 for maintenance of equipment, which was 14 per cent of our revenue, the Burlington had $23,203,000, which was 14.3 per cent of its revenue. Now in like manner it has dropped down, and when in 1934 we had $10,766,000, which was 12 per cent of our revenue, the Burlington had $9,256,000, which is 11½ per cent of its revenue.

As I have examined these figures, there seems to be a pretty constant relationship between the ratio of your equipment expenditures to your revenues.

Director Sweet: Anything more than the fact that the management of the railroads, as they have seen revenues shrinking, have curtailed expenditures for the maintenance of road and equipment accordingly?

The Witness: That might have some bearing, but
4871 I think it has more to do with the fact that you do not have the business, you are not using the cars, and there is not the necessity of making the same repairs on them, because you have not the same number in use.

Director Sweet: To the extent that that may be so, is it not likely that there may be an accumulation of maintenance, or perhaps something in the nature of a deferring of maintenance, which will have to be made up if there is a recovery in business, that your assumption here as to earnings contemplates?

The Witness: No, I would say that there is no deferred maintenance in any of our equipment, but I think that in stepping up our proportions to the ratio of earnings, that if we need the cars, we will put them back into condition. Another thing you must take into consideration is, we have retired a great deal of our old equipment, in 1935 our average age of freight cars will be about, as I recollect it, two years older than in 1928, although seven years have elapsed, because we have got rid of a lot of the old type of equipment.

Director Sweet: Is it not true that excepting perhaps general officers' salaries, it is easier to reduce maintenance expenditures in times when earnings are falling off than these other items of expense?

The Witness: I do not know that it is so easy to re-
4872 duce maintenance of equipment expenditures. If you need your cars it is certainly an expensive thing not to be able to have the cars. I think our superintendent of motive power would testify, or he told me so, that the locomotives we have in service are in as good or better condition than they were in 1928. I am not talking about the ones we have run the life out or are putting them in white lead, waiting for the business to come back, but the locomotives we are using today, I think, are in as good condition as they were in 1928.

Director Sweet: Are you aware, in the case of the Milwaukee, of any change in the nature of a reduction in the accepted standard of maintenance, both of way, road, structures and equipment?

The Witness: I do not know about the standard. I do know this: that I think our vice president of operations and the chief engineer have made great strides in the way of our maintenance; that they are making money go further than they ever did before in the maintenance of way and, furthermore, we have been applying since 1926 a much greater proportion of current ties and have been putting in tie plates, and we ought to begin getting some of the benefit of those things in our maintenance. Furthermore, we are making rail last longer than we ever an-
ticipated it would lost. We used to take out rail and
4873 saw off the ends because it got battered, and now we take them up and heat treat the ends so as to harden them and resist batter, and by use of improved angle bars you are able to make rail last a great deal longer than we ever anticipated it would last in 1925 and 1926. I think a dollar of maintenance now goes a great deal further than it did in 1925, 1926, 1927 and 1928.

Director Sweet: That is all. Are there any other questions of this witness?

Q. (By Examiner Boyden.) When you refer to locomotives in service, Mr. Sparrow, that includes locomotives which are in white lead? Is that correct?

A. I did not mean, when I said our superintendent of motive power said the locomotives in service were as good, but I meant the ones actually now in the operation of the trains.

Q. It is true that locomotives are set aside in white lead and are not maintained to the same extent as are locomotives which are actually being used on the line?

A. That is perfectly true, Mr. Boyden, and that is one way we have economized. We have run out the miles and have them on the shelf until we need them.

Q. The locomotives in white lead won't come out of there for sale until the traffic requirements of the company necessitate their use?

4874 A. That is right.

Mr. Swaine: Have you any questions, Mr. Burgess?

Mr. Burgess: No, I have no questions.

Q. (By Examiner Walsh.) Mr. Sparrow, will you furnish a break-down of Exhibit No. 94, showing how much or what parts of the sum of $13,994,174 is attributable to each of the several mortgages? I understand that a part of it—

A. That exhibit is the replacement exhibit?

Q. Yes, sir. I understand that a part of it would go to the general mortgage.

A. That default clause, all comes under our first and refunding mortgage. The general mortgage does not have a provision covering it.

Q. That won't be necessary then. There are several other things here. Will you let us have the details of the preferential claims, if that has not already been done?

Mr. Swaine: It is in a schedule.

Examiner Walsh: Also the details of these claims which you are going to convert into stock. Have you done that previously?

Mr. Swaine: All of the liabilities, other than funded debts and the notes of the R. F. C., General American Tank Car, Austin Machinery and Evans Loader are con-

4875 tained in Exhibit No. 72.

Now, as to those, you will remember that the testimony was that a number of the amount stated, for instance, personal injury claims and property damage claims, were estimates.

Examiner Walsh: Yes, sir.

Mr. Swaine: Similarly, there either have been filed or will shortly be filed applications to the Court for instructions with respect to certain obligations, the disaffirmation of which will create claims for damage, and it was to provide for those claims that the modification was suggested for making a provision for unsecured creditors of one half share preferred and one half share common, and for $1,000,000 principal amount claimed which they might establish. It is estimated that the amount of those—we are not through with it, in other words—but it is estimated that the

ultimate amount of those will be considerably under one-half million dollars.

Examiner Walsh: You have not given us the details on that yet?

Mr. Swaine: We have not given you the deails on that because, in the first place, we do not know what the amount will be. For instance, the lease on the fifth avenue of-
4876 fice in New York is one of the contracts to be disaffirmed. We have no idea of what the damage will be as to that.

Examiner Walsh: Suppose you give us a list of the expected claimants without stating the amount.

Mr. Swaine: All right.

Q. (By Examiner Walsh.) Then, Mr. Sparrow, I understood you to say that there were defaults in the mortgages with respect to the maintenance of roadway property. Is that so?

A. No, I think not. Perhaps you have reference to the statement I made about the Gary. At the time that that line was discontinued, the operation of it, after we acquired the Gary in 1922, or whenever it was, we did not maintain or ever use the line from Kirkland to Rockford, and it was in 1930 that we made that agreement with the bondholders to waive the default of not having maintained that line, and the present company assumed the principal and interest of those bonds. I know of no defaults as to the maintenance of the Milwaukee.

Director Sweet: Some of these questions suggest the possibility that the plan may contemplate the issue of permanent securities for expenditures in the nature of operating charges. Mr. Sparrow, could you make an analysis of this plan of reorganization for the purpose of indicat-
4877 ing the extent to which it is proposed in the plan to issue permanent securities, long term debt or stock, to pay operating expenses?

Mr. Swaine: There are not. The only point at which there is any such possibility is in respect of this stock that I have just mentioned, where the amount is estimated to be less than one-half million dollars. Of course, that is provided for in effect, in legal form, by the existing stockholders reducing their capital. The total capitalization of the company is very materially reduced, and taking either book value or valuation, this capitalization will show a substantial surplus.

Director Sweet: That is true. Of course you are proposing a reduction of capitalization, but, even so, it may happen that you are proposing to issue s curities of a permanent character, such as stock or long term debt, for charges that might be considered in the nature of operating charges.

Mr. Swaine: The only case in which that would be true would be this classification that I have just mentioned, that is, this unknown amount of possible damage claims for repudiation of contracts.

Director Sweet: General creditors are to be treated how?

Mr. Swaine: Paid in full in cash. When the plan
4878 was promulgated, we assumed that there were no outstanding claims which were not either legally entitled to priority as six months claims or which were of a character that they have been in railroad reorganizations habitually given a priority through the device of compromises, even though they are perhaps not technically prior to the mortgage. I refer to property damage and personal injury case.

The Witness: Overcharge claims.

Mr. Swaine: There the practice is to agree with the claimant upon an amount and in dollars, at which he will compromise his claim, and then go to the court and get permission to pay it as a compromise amount.

Director Sweet: In cash.

Mr. Swaine: In cash. I suppose in a highly technical sense, that may be violating somebody's preference, but the courts have, over a least the last two decades, recognized that as a practical necessity. It was, as I say, contemplated when the plan was put out, that we would not have any claims at all that would not fall in those classes, and, therefore, the plan, as formally proposed, contemplates no provision for unsecured claimants other than payment in full in cash. It was when we saw that there were some leases
which perhaps should be repudiated and fixed up by
4879 the issue of the junior security for the damage claim, that we thought that we ought to divide this small amount.

Director Sweet: Describe the occasion, Mr. Swaine.

Mr. Swaine: Mr. Dynes tells me that at the present time he only knows of two such claims.

Director Sweet: Now, to a large extent at least, the cash which is to be available to pay these preferred claims and

other claims of general creditors it to be provided by the Reconstruction Finance loan?

Mr. Swaine: No, these preferred claims are taken out of operating expenses, and they are chargeable to operating expenses. If this property went right on, all of these claims are charged to operation and necessary expenses are charged against income as an operating expense.

Mr. Sparrow, you will remember, went over that exhibit and pointed out that the entire $20,000,000 of balance sheet current liabilities there listed were there either legally prior claims or practically prior claims on the basis that I have explained, but no securities are being sold to provide for those payments.

Director Sweet: The cash to pay general creditors, you think, would be realized from operation, do you not?

Mr. Swaine: Putting it another way, I think this: Assume that that property was not organized for four or
4880 five years, the receivers would have paid out all of those amounts out of the ordinary receipts of the receivers. That is exactly what would happen to all these claims in a receivership, a previous receivership, and exactly what happened to all the same kind of claims in all the pending receiverships I know anything about.

Examiner Walsh: Are you going to date your interest from July 1, 1935?

Mr. Swaine: No, the interest in each case dates from the last coupon, but because we have so many different issues involved here, the income bonds are arbitrarily taken at six months periods and we dip into the six months income to pay the coupons maturing up to a defined date.

Examiner Walsh: But you will need all the receivers' income to pay interest with?

Mr. Swaine: And more. You will need all Mr. Sparrow's study of the plan indicated, nearly three million dollars of the R. F. C. loans to pay current interest.

Director Sweet: For the first two years?

The Witness: For the first two years, at the end of 1938.

Examiner Walsh: That is, you are not going to take advantage of the receivership to eliminate any interest period at all?

4881 Mr. Swaine: No, except as to the adjustment bonds. They have 47½ million dollars of accrued interest, all of which is to be changed into preferred stock.

Examiner Walsh: There is one other question, Mr. Sparrow. You previously were asked to state the amount of equipment vacancies under the Milwaukee & Northern mortgages, and you stated it was two or three million dollars. Could you not give us a little more careful estimate?

The Witness: Yes, sir, I would be glad to. Would you like to have that submitted as an exhibit or sent to the Director as a letter?

Examiner Walsh: I think that should be in the record.

The Witness: All right, sir.

Director Sweet: Furnish it as an exhibit and it can be given a number and the parties notified.

The Witness: Yes, sir.

(Witness excused.)

H. A. SCANDRETT was sworn and testified as follows:

Direct Examination.

Q. (By Mr. Swaine.) Mr. Scandrett, you are president of the debtor?

A. Yes, sir.

Q. How long have you been president?

4882 A. Since the 14th of January, 1928.

Q. Which is the day the debtor took over the property from its predecessor in title?

A. Yes, sir.

Q. Had you had experience in railroad problems before that?

A. Since January 1, 1901.

Q. Will you briefly summarize that?

A. On that date I began my railroad service with the Union Pacific Railroad in the claim department in Omaha, Nebraska, as a claim adjuster, and I also did some work in the land department, and in November of that year I was transferred to the law department at Topeka, Kansas. That office handled law work for the states of Kansas and Missouri. I remained there until January 1, 1911, when I was appointed assistant interstate commerce attorney of the Union Pacific and the Southern Pacific Company, later was made interstate commerce attorney for those lines and held that position until that merger was dissolved under decree of the Supreme Court of the United States, at

which time I remained with the Union Pacific as interstate commerce attorney.

On January 1, 1918, in addition to those duties, I was appointed assistant director of traffic of the Union Pacific System Lines, and held those positions until
4883 July 1, 1918, when I was placed in charge of traffic for the central western division of the United States Railroad Administration. I resigned from that latter position on November 1, 1919, and was returned to the Union Pacific as valuation counsel, in charge of the valuation work of that system, as well as commerce counsel.

In 1925 I was made vice president of the Union Pacific, and continued to handle the work I had theretofore handled, and was also placed in charge of the public relations department and the land department of that system. I held that position as vice president until my election as president of the Milwaukee Road.

Q. At the time the debtor took over the operation of those properties on January 14, 1928, what was the amount of its investment in its properties and what was its current position and its funded debt?

A. As of that date, the debtor's investment in road and equipment on its balance sheet was $669,574,777.89; miscellaneous physical property and other investments amounted to $30,925,968.63, making the total investment $700,500,746.52. Cash and other current assets were $36,405,491.61, and current liabilities $33,234,136.10. The funded debt outstanding in the hands of the public amounted to $443,747,789, of which $154,479,000 was a lien on the property when acquired.

4884 Q. That $154,000,000 was the list of securities which Mr. Sparrow identified this morning, was it not?

A. That is correct.

The balance was fifty year 5 per cent mortgage gold bonds, Series A, in the sum of $106,395,096 and Convertible Adjustment Mortgage Bonds in the sum of $182,873,693, issued by the new company in connection with the acquisition of the property. Capital stock was: preferred 1,188,458 shares, par value $100, total amount $118,845,800, and common stock, 1,174,060 shares of no par value, which was stated on the books at $141,434,517.24.

Q. That latter figure was really the balancing figure

between the par value of all the securities at par value and the book value of the company's property, was it not?

A. Yes, sir.

Q. The first report to the stockholders was issued that year from January 14, 1928 to December 31, 1928?

A. Yes, sir.

Q. And was that the document which was produced but not actually filed and given exhibit No. 97 this morning, of which I now hand you a copy? (Handing paper to witness.)

A. That is it.

Mr. Swaine: We offer it now with the same number, debtor's exhibit No. 97.

(DEBTOR'S EXHIBIT NO. 97, Witness Scan-
4885 drett, received in evidence.)

Q. (By Mr. Swaine.) Will you briefly summarize the matters of financial importance in the corporation's history for the year 1928?

A. This report shows that operating revenues for this period were $165,303,693.60; railway operating expenses $120,580,918.39; net railway operating income $29,027,055.21; net income before deduction for interest on funded debt $30,498,753.97. Interest accruals on funded debt were: On fixed interest bearing obligations $12,093,097.86; Convertible Adjustment Mortgage Bonds, 5 per cent, $9,143,684.65.

Q. That latter, rather than a fixed obligation, was mandatory, was it not, by reason of the fact that the earnings exceeded the amount of the interest?

A. That is correct. The total of these interest accruals was $21,236,782.51, leaving a net income for the period of $9,261,971.46. Gross additions and betterments amounted to $15,322,993.43, property retired and converted $2,348,985.41, and net additions and betterments $12,974,008.02. Funded debt in the hands of the public was increased by $24,000,000, principal amount, General Mortgage 4½ per cent series E Bonds, sold at par, to provide for the retirement of $14,000,000, principal amount, C. M. & St. P. Ry. Co. 10 year first mortgage bonds gold loan
4886 of 1924, bearing interest at 6 per cent per annum, resulting in a saving to January 1, 1934, of $596,256; to provide part payment of new equipment purchased under equipment trust; additions and betterments to the property; and other corporate purposes. It was also increased by $8,911,000 principal amount equipment trust

certificates, Series E, F, G and H, issued and sold for the purchase of equipment. Funded debt was decreased by the calling for redemption of $14,000,000 principal amount, of Ten Year First Mortgage Bond Gold Loan of 1924, due January 1, 1934, and by the payment of $3,280,500, principal amount, of equipment trust notes maturing during the year. The net change in the funded debt was an increase of $15,630,500. In this period short term notes for equipment purchased prior to January 14, 1928, aggregating $2,133,669, were retired.

Q. Is the document which I now show you the report rendered to the stockholders for the year 1929? (Handing document to witness.)

A. That is correct.

Mr. Swaine: I offer that as debtor's exhibit No. 99.

(DEBTOR'S EXHIBIT NO. 99, Witness Scandrett, received in evidence.)

Q. (By Mr. Swain.) Now will you briefly summarize the financial changes in the company's position dur-
4887 ing that year?

A. The second annual report for the year ended December 31, 1929, shows that operating revenues were $171,361,385.36; operating expenses $128,800,860.77; net railway operating income $26,274,323.35; net income before deduction for interest on funded debt, $29,076,068.10; interest accrued on funded debt was $22,002,053.65, of which $12,858,369 was for fixed interest bearing obligations and $9,143,684.65 for Convertible Adjustment Mortgage Bonds.

Q. Now again the income in that year was such as to make the payment of that adjusted mortgage bond interest mandatory, was it not?

A. Yes, sir. Net income after interest was $7,074,014.45. Gross additions to investment were $21,197,176.75. Deductions for retirements and conversions $3,468,596.24. Net additions and betterments $17,728,580.51. Funded debt in the hands of the public was increased by the issuance of equipment trust certificates J in the sum of $8,370,000, and decreased by the principal amount of equipment trusts maturing during the year amounting to $3,889,500 and by the purchase of Bellingham Bay and British Columbia Railroad Company bonds for the sinking fund, amounting to $36,000, a net increase in funded debt of $4,444,500.

4888 Q. Is this document the report rendered to the stockholders for the year 1930? (Handing document to the witness.)

A. Yes, sir.

Mr. Swaine: I offer it as debtor's exhibit No. 100.

(DEBTOR'S EXHIBIT NO. 100, Witness Scandrett, received in evidence.)

Q. (By Mr. Swaine.) Now, will you summarize the changes in the company's financial position during the year 1930?

A. In the year 1930 railway operating revenues were $142,569,631.54, a decrease from the previous year of $28,791,753.82, reflecting the effect of the industrial depression which began in the fall of 1929; operating expenses were $112,295,804.91; net railway operating income $15,954,547.86; net income before deduction for interest on funded debt $17,901,206.57; deduction of $13,642,931.75 for fixed interest on funded debt left net income before deduction for interest on convertible adjustment mortgage bonds of $4,258,274.82, or $4,885,409.83 short of full interest on such bonds which became cumulative January 1, 1930.

Q. As to that item, that was the amount of the income remaining after taking out for capital purposes the amount permitted by the adjustment mortgage, and therefore, the payment of this amount was again mandatory. Is
4889 that correct?

A. Of a certain amount.

A. Of a certain amount.

Q. This amount was mandatory?

A. Yes.

Investment was increased by gross additions and betterments in the sum of $26,792,971.36; decreased by retirements and conversions $6,692,684.97, a net increase of $20,100,286.39. It will be recalled that at this time all industry was urged by public authority to carry on extensive improvement programs in the interest of providing employment to offset the effects of the depression.

Principal of funded debt in the hands of the public was increased by the issue of C. M. & St. P. Ry. Co. General Mortgage Series F 4½ per cent Bonds in the principal amount of $15,000,000, the proceeds of which were used to reimburse the company for expenditures made for additions and betterments made to road and equipment and to provide for part payment on new equipment purchased

under equipment trusts; by assumption of Chicago, Milwaukee & Gary Railway Company First 5 per cent Mortgage Bonds in the sum of $3,000,000 in connection with the acquisition of the property of the Gary on April 1, 1930, by the issuance of equipment trust certificates K and L in the sum of $6,375,000, and by sub-lease agreement with the General American Tank Car Corporation
4890 for equipment, the principal amount of which was $1,057,500, making a total increase of $25,432,500. Funded debt was decreased by principal of equipment car trust certificates and notes maturing during the year and by principal paid on General American Tank Car Corporation lease in the aggregate amount of $4,819,311.73, and by the principal amount of Bellingham Bay and British Columbia Railroad Company bonds purchased for the sinking fund in the sum of $36,000.00, making the total decrease $4,855,311.73. The net increase in funded debt was $20,577,188.27.

Q. Is this a copy of the annual report rendered for the year 1931? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I offer it as debtor's Exhibit No. 101.

(DEBTOR'S EXHIBIT NO. 101, Witness Scandrett, received in evidence.)

Q. (By Mr. Swaine.) Now, will you summarize the changes in the company's financial position during the year 1931?

A. For the year ended December 31, 1931, railway operating revenues were $111,423,771.71, a decrease of $31,145,859.83, or 21.8 per cent from the previous year, indicating the continued effect of the depression. Operating expenses amounted to $89,269,445.97. Net railway operating income was $8,334,406.19; net income before deduction for interest on funded debt, $9,190,516.65, which left
4891 a deficit of $4,669,074.37 before accrual of 5 per cent interest on convertible adjustment mortgage bonds. The total income deficit for the year was $13,812,759.02. Gross additions and betterments for investment in road and equipment were $8,603,321.51, deductions for retirements and conversions were $5,103,990.83, making the net additions and betterments, $3,499,330.68. Funded debt decreased $5,561,930.97, through payment of principal of car trust certificates maturing during the year, $4,649,500; payment of amounts due on General American Tank Car Corporation equipment lease, $45,430.97; purchase of

equipment trust notes in advance of maturity—those we were able to purchase at a substantial discount—$852,000.00, and purchase of Bellingham Bay & British Columbia Railroad Company First Mortgage Bonds for the sinking fund in the sum of $15,000,000. The compensation of all salaried employees receiving in excess of $3,600 per annum was reduced 10 per cent effective October 1, 1931.

Q. When you say "salaried" employees, you do not mean to exclude executive officers, do you?

A. No, sir, I mean everybody who received more than $3600 a year.

Q. Is the document which I now show you the
4892 annual report for the year 1932? (Handing document to witness.)

A. Yes, sir. I regard myself as an employee.

Q. Under some statutes I believe it has been held that the word "employee" does not include an officer. I did not want that inference drawn.

A. That is the report for that year.

Mr. Swaine: I offer that as debtor's exhibit No. 102.

(DEBTOR'S EXHIBIT NO. 102, Witness Scandrett, received in evidence.)

Q. (By Mr. Swaine.) Will you please summarize the changes in the company's financial condition for the year 1932?

A. The report of the company for the year ended December 31, 1932, shows that railway operating revenues were $84,900,832.82, a decrease of 23.8 per cent or $26,522,938.89 from 1931, and a decrease of 50.46 per cent from 1929.

Operating revenues were less than for any year since 1913. Railway operating expenses were $72,078,118.46. As a result of an agreement between the railroads and the Railway Labor Executives Association a ten per cent deduction in wages went into effect on February 1, 1932, which accounted for approximately 4.3 per cent in the decrease in operating expenses in 1932 as compared with 1931. There was no net railway operating income for the year; instead, there was a deficit of $518,115.99. The
4893 net income before deduction for interest on funded debt was also a deficit of $287,941.96. Interest on fixed interest bearing funded debt amounted to $13,838,051.27. Interest on Convertible Adjustment Mortgage Bonds, accrued at 5 per cent, was $9,143,684.65, which

made a net deficit in income for the year of $23,269,677.88. During the year gross additions and betterments for investment in road and equipment amounted to $3,601,870.57, retirements and conversions $3,924,980.07, making the net decrease in investment for the year $323,109.50.

Funded debt in the hands of the public was increased during the year $7,963,000, the amount of a loan from the Reconstruction Finance Corporation under an authorized loan of $8,000,000. Funded debt was decreased by $4,276,846.70 payment of principal of equipment trust notes and certificates and amount due on General American Tank Car Corporation lease maturing during the year; $111,000.00 by the purchase in advance of maturity of equipment trust certificates, and $303,000.00 Bellingham Bay & British Columbia Railroad Company 5 per cent mortgage bonds which matured December 1, 1932. The net increase in funded debt was $3,272,153.30.

For this year the company paid to the Railroad Credit Corporation $1,702,897.82 from revenue obtained
4894 through the application of emergency freight rates authorized by the Interstate Commerce Commission for the period January 4, 1932, to March 1, 1933, later extended to September 30, 1933, and borrowed from the Railroad Credit Corporation on a short term note $2,000,000.

Q. I believe the question was asked of Mr. Sparrow, what the purposes of the loans of the R. F. C. and the Railroad Credit Corporation were. Will you take Exhibit No. 102 and turn to page 12 and state for the record the purposes of those loans? It is the last paragraph on page 12.

A. That loan was applied, the Reconstruction Finance Corporation loan was applied, $1,759,036, to principal payment of equipment trust certificates, equipment sub-lease and Bellington Bay & British Columbia Railroad Company first mortgage bonds, $3,908,426 to interest on fixed interest bearing securities outstanding and $2,295,536 for additions and betterments.

Q. Now the R. C. C. loan was applied entirely to the payment of interest, was it not?

A. That is my recollection.

Q. Is the document which I now hand you the annual report for 1933? (Handing document to witness.)

A. Yes, sir, that is.

Mr. Swaine: I offer it as debtor's exhibit No. 103.

4895 (DEBTOR'S EXHIBIT NO. 103, Witness Scandrett, received in evidence.)

Q. (By Mr. Swaine.) Will you please summarize the changes in the company's financial position during the year 1933?

A. During 1933, Railway operating revenues amounted to $85,495,219.84, an increase of $594,387.02 over 1932. Beginning with the latter part of April and continuing until the end of July there was a substantial gain in freight revenue over the previous year but traffic began to fall off about September and for the balance of the year was generally below that of the previous year.

Railway operating expenses for the year were $64,596,840.54. Net railway operating income amounted to $8,597,319.40; net income before deduction for interest on funded debt, $8,523,432.92. Interest on fixed interest bearing funded debt amounted to $13,791,889.48, which left a deficit of $5,268,456.56. Interest accrued at 5 per cent on convertible adjustment mortgage bonds amounted to $9,143,684.65, which made the total income deficit for the year $14,412,141.21. The gross additions and betterments to road and equipment during the year amounted to $2,067,496.97, retirements and conversions $4,523,859.69, making a net decrease in investment in road and equipment of $2,456,362.72. Funded debt was reduced $4,586,671.94 through payment of principal matur-
4896 ties of equipment trust notes and certificates and General American Tank Car Corporation lease payments aggregating $4,623,671.94, less an additional amount of $37,000 received from the Reconstruction Finance Corporation on loan of $8,000,000 authorized in 1932. At the end of the year the total amount paid to the Railroad Credit Corporation on account of the increase due to emergency freight rates which were discontinued on September 30, 1933, was $2,077.139. On May 29, 1933, an additional two year loan of $1,710,000 was obtained from the Railroad Credit Corporation.

Q. That, was again for the purpose of payment of interest, was it not?

A. Yes, sir.

The 10 per cent deduction agreement between the railroads and the Railway Labor Executives Association which went into effect February 1, 1932, was continued by further agreement until June 30, 1934; in addition to the salary deduction of 10 per cent effective October 1, 1931, the compensation of all salaried employees—and that again in-

cludes officers— receiving in excess of $3600 per annum was reduced 10 per cent effective February 1, 1933, except that no salary was reduced below $3600 per annum.

Applying that 10 per cent to the reduced salaries
4897 made in that case a total reduction of 19 per cent.

Further substantial reductions were made in the salaries of executive officers and the Law Department effective July 1, 1933.

Q. Is this the annual report for the year 1934? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I offer it as debtor's exhibit No. 104.

(DEBTOR'S EXHIBIT NO. 104, Witness Scandrett, received in evidence.)

Q. (By Mr. Swaine.) Will you please summarize the changes in the company's financial condition during 1934?

A. In 1934 railway operating revenues amounted to $87,859,792.05, an increase from the previous year of $2,364,572.21. Railway operating expenses were $69,655,547.03, an increase of $5,058,706.49 over the preceding year, due principally to additional maintenance expenses, increased wages paid labor, increased cost of materials and accrual to cover the company's contribution to the National Railroad Pension Fund required by the Railway Retirement Act, which was subsequently declared unconstitutional. The amount charged to operating expenses in 1934 on account of the Railroad Retirement Act, $746,043.17, was credited to operating expenses in the month of May
4898 1935. Under an agreement dated April 26, 1934, between Conference Committee of Railroad Managers and Railway Labor Executives Association the 10 per cent deduction from basic rates which went into effect on February 1, 1932, was restored as follows: 2½ per cent July 1, 1934; 2½ per cent January 1, 1935 and 5 per cent April 1, 1935.

Beginning with April 1st there was a full restoration of the amount of the deductions.

While, as I have stated, the wage deductions, effective February 1, 1932, have now been restored in full, that is not the situation with respect to salaries. I have already referred to the salary reductions made effective October 1, 1931, February and July 1, 1933. In the case of salaries of $5000 and over, as of January 1, 1929—I took that date because that was in the fall of 1929 when we first began to

feel the effects of the depression. There were some salaries which were somewhat higher (than) subsequent to January 1, 1929, than they were on that date, so that when you measure the reductions from January 1, 1929, you do not in all cases measure the maximum reduction that has been made in salaries.

In the case of salaries of $5000 and over, as of January 1, 1929, the reductions in the Executive Department range from 19 per cent to 56 per cent, and including three positions abolished and one salary increased, the net re-
4899 duction of the department is 38.4 per cent.

In the accounting department, with one position abolished, the reductions range from 2.8 per cent to 26.5 per cent, with a net reduction for the department of 28.6 per cent.

In the operating department, with six positions abolished, the reductions range from 2.8 per cent to 32.5 per cent, with a net reduction for the department of 29.4 per cent.

In the traffic department, with three positions abolished and one position created, the reductions range from 2.8 per cent to 19 per cent, with a net reduction for the department of 18.2 per cent.

You will observe in the case of the traffic department that the net reduction for the department is in excess of the reduction of any salary in the department, which is due to the fact that there were three positions abolished and one created.

In the purchasing department the reductions range from 14 per cent to 20 per cent, with a net reduction for the department of 17.1 per cent.

In the law department with one position created and one advance in salary, the reductions range from 3.8 per cent to 57.1 per cent, with a net reduction for the department of 27.8 per cent. I do not know whether it would be
4900 proper to say, Mr. Swaine, that you participated in that maximum reduction of 57.1 per cent.

In the engineering department, with two positions abolished, the reductions range from 5.9 per cent to 33.3 per cent, with a net reduction for the department of 28.7 per cent.

In the mechanical department, with one position abolished, reductions range from 8.9 per cent to 19 per cent, with a net reduction for the department of 22.1 per cent.

In the medical and claim departments reductions range

from 14 per cent to 19 per cent, with a net reduction for these departments of 16.4 per cent.

The total reductions on an annual basis in the case of all of these positions is $358,153. In percentage of the total pay roll for 1934 these reductions are .84 per cent, which bears out the statement which Mr. Sparrow made that if all the executive officers worked without salary, it would not substantially affect the net operating results.

By way of contrast, these figures, perhaps, averaging 20 to 25 per cent reductions in salaries and aggregating in the total $358,000, my recollection is that a 10 per cent reduction on the total payroll at that time was between four and a half and five million dollars—or twelve to fifteen times as much.

4901 I should like to add—and I think that this is certainly due to the personnel of the Milwaukee Road—that while these reductions have very substantially reduced the income of these officers, and have no doubt in many cases made it difficult for them to get along, they have been accepted in the best of spirit and with absolutely no complaint, so far as I am advised.

Net railway operating income for the year 1934 was $6,539,053.99; net income before deduction for interest on funded debt, $6,390,652.61; interest on fixed interest funded debt amounted to $13,494,508.82, which left a deficit before deduction for interest on convertible adjustment mortgage bonds of $7,103,936.21. Interest on convertible adjustment mortgage bonds, accrued at 5 per cent, was $9,143,684.65, making the income deficit for the year $16,247,620.86.

On authority of the Interstate Commerce Commission charges amounting to $2,362,891 for retirement of 5957 units of obsolete equipment, which would otherwise under the rules of the Commission have been charged to operating expenses, were charged to profit and loss account. An adjustment of $513,306.28 in operating tax accruals for the State of Washington for the period January 14, 1928 to December 31, 1932, on the basis re-assessments made

4902 by the Washington Tax Commission and accepted in a settlement made in 1934 was also charged to profit and loss account on authority of the Commission, which would otherwise have been charged to railway tax accruals.

We had litigation with the taxing authorities of the State of Washington over a period of years, and in 1934

we finally made a settlement, the effect of which was to give us a very much better assessment than we had had prior to the institution of the litigation.

The net decrease in investment in road and equipment during the year was $39,113,192.27. Of this amount $31,725,699.71 was due to a reduction as of January 1, 1934, of the book value of equipment acquired from the Chicago, Milwaukee & St. Paul Railway Company January 14, 1928. This was done by permission of the Interstate Commerce Commission, in order to conform to the final valuation of the Commission, decided June 10, 1933. The book value of common stock was reduced a corresponding amount. The balance of the decrease for the year, $7,387,492.56, was due to retirements and conversions amounting to $12,178,306.21, less gross additions and betterments of $4,790,813.65.

Funded debt in the hands of the public decreased $1,080,345.69 explained as follows: equipment trust notes and certificates and principal of General American 4903 Tank Car Corporation lease maturing during the year, $4,907,808.19; payment on Reconstruction Finance Corporation Loan, $537.50; total decrease $4,908,345.69; increases during the year, Equipment Trust Certificates, Series M, $1,537,000; notes to the Federal Emergency Administration of Public Works, less repayments during the year, $2,291,000; total increases, $3,828,000.

On January 16, 1934, the company received from the trustee of the first and refunding mortgage its first issue of bonds thereunder in the principal amount of $9,866,000, which were issued under authority of the Interstate Commerce Commission to reimburse the treasury for net capital expenditures from income for extensions, improvements, additions and betterments to the property made since January 13, 1928, in the aggregate amount of $9,018,122; and for bonds of the Chicago, Terre Haute & Southeastern Railway Company in the aggregate amount of $848,159, received in reimbursement for fundable advances made to that company since June 1, 1925. These bonds, known as first and refunding mortgage 6 per cent bonds, Series A, are dated June 1, 1933, and mature June 1, 1943. The disposition made of these bonds is as follows:

Pledges for loans from Reconstruction Finance Corporation, $6,000,000; pledged for loans from the Federal Emer-

gency Administration of Public Works, $2,665,000;
4904 pledged with the trustee under Equipment Trust
Series M in lieu of initial cash payment, $258,000;
in the treasury of the company, $943,000.

During the year 1934 the Railroad Credit Corporation credited on our note of July 27, 1932, $186,942, the company's share of distributions under the Marshalling and Distributing Plan, and upon payment of $25,000 in cash extended the balance of the loan by accepting the company's note maturing on or before June 26, 1936, in the amount of $1,580,344. The balance due on the renewed note as of December 31, 1934, due to subsequent credits was $1,393,401, which together with the note of $1,710,000, dated May 29, 1933, made the total due the Railroad Credit Corporation at the end of the year $3,103,401.

Milwaukee & Northern Railroad Company first mortgage bonds outstanding in the principal amount of $2,117,000, and Milwaukee & Northern consolidated mortgage bonds outstanding in the principal amount of $5,072,000, matured June 1, 1934. A plan was submitted to the bondholders providing for a five-year extension at an interest rate of 4½ per cent per annum, the holders of the bonds agreeing to the plan to receive a cash payment of $50 per $1,000 bond. The extension was authorized by the Interstate
Commerce Commission and as of December 31, 1934,
4905 98 per cent of the first mortgage bonds and 94 per
cent of the principal amount of Consolidated Mortgage Bonds had been extended in accordance with the plan.

Summarizing the foregoing for the period from January 14, 1928, the date the new company commenced its operations, to December 31, 1934, railway operating revenues were $848,914,327; railway operating expenses $657,277,536; net railway operating income $94,208,590; net income before deductions for interest on funded debt, $101,292,689; interest on fixed interest bearing funded debt, $93,578,519; net income before deduction for interest on convertible adjustment mortgage bonds, $7,714,170; interest on convertible adjustment mortgage bonds, $64,005,793; net income deficit, $56,291,623. Interest on convertible adjustment mortgage bonds at 5 per cent was declared for 1928 and 1929, and at 1½ per cent for 1930, making a total interest declaration out of the income for this period of $21,030,474.70.

During this period investment in road and equipment was increased by additions and betterments $82,376,644.24, and decreased by retirements and conversions $38,241,403.42, making net additions and betterments $44,135,240.82.

Funded debt outstanding in the hands of the public increased $32,695,393. There was also an increase due to short term notes issued to the Railroad Credit Cor-
4906 poration outstanding December 31, 1934 in the sum of $3,103,401 and short term notes issued to the Reconstruction Finance Corporation outstanding as of the same date in the sum of $2,700,000; other short term notes outstanding amounted to $36,205.12.

$2,133,669 short term equipment notes outstanding at the beginning of the period were retired.

In passing, it will be noted that eliminating interest on the adjustment bonds there was a net income for the period January 14, 1928, to December 31, 1934, of $7,714,170. Also, while the debt of the Company increased $36,401,390, the net additions and betterments were $44,135,240, or $7,773,850 in excess of the increase in debt.

Q. Have you caused to be prepared a statement showing a comparison of funded debt and short term equipment obligations outstanding in the hands of the public as of January 14, 1928, with funded debt and short term notes to the Reconstruction Finance Corporation and the Railroad Credit Corporation outstanding July 1, 1935?

A. Yes, sir.

Q. Is the one-page document which I hand you that comparative statement? (Handing paper to witness.)

A. Yes, sir.

Mr. Swaine: I offer that as debtor's exhibit No. 105.

4907 (DEBTOR'S EXHIBIT NO. 105, Witness Scandrett, received in evidence.)

Q. (By Mr. Swaine.) Mr. Scandrett, will you please describe to the Commission in a general way the nature of the major additions and betterments covered by the eighty-two million odd dollars of additions and betterments?

A. Do you not want me to comment on this first?

Q. All right.

A. I do not think a great deal of comment is necessary on Exhibit No. 105. I think that it is quite clear. I only want to refer to certain features. It will be observed that in the next to the last column it shows the actual interest

accruals January 14 to December 31, 1928, and the last column shows the accruals in the year ended June 30, 1936. Now, it will be observed that on the basis of these actual accruals, January 14 to December 31, 1928, the amount was $21,354,399, while for the year ending June 30, 1936, the figure is $22,580,460, an increase of something over $1,200,000. If, however, you use the figure in parenthesis, plus the figure of $21,354,000, which is the correct figure, if you take 1928 on a calendar year basis, the charges are $21,940,000, which is about $640,000 less than for the year ending June 30, 1936.

It will also be noted that in the 1928 column the
4908 average interest rate was 4.832, while in the 1936
column it is 4.725, showing a somewhat lower interest charge at present than in 1928, that is, interest rate.

Q. Now, will you describe the major additions and betterments included in the $82,000,000 figure?

A. I thought it might be of interest to refer briefly to some of the principal expenditures for additions and betterments during the 7-year period of operation of the company. A good many of these expenditures have been required by public authority and cannot be put under the category of profitable investments, but quite necessary.

Track elevation in the Chicago area, in Evanston, Illinois, and in Milwaukee, Wisconsin, in compliance with orders of public authorities, necessitated the expenditure of $5,258,869. In addition we paid the State of Wisconsin $327,273 as our proportion of a grade separation program in that state, and expenditures in other states for the same purpose aggregated a very considerable sum.

A new double track line of railroad was constructed at Sioux City, Iowa, at an expenditure of $447,302, which very much improved our operating situation, as formerly our line went over a hill with heavy grade and curvature.

We rearranged and enlarged our Muskego Yard at Mil-
waukee at a cost of $370,535, and an estimated an-
4909 nual saving of $127,000.

A double track railroad was provided between Polo and Birmingham, Missouri, a distance of approximately 38 miles, jointly with the Rock Island. Our proportion of the cost was $2,659,404.

The Rock Island previously had had a trackage arrangement by which it used the Burlington line from Trenton, Missouri. It was dissatisfied with that lease, and being in

funds at the time, contemplated building a line of its own. We thought, as long as their line, in a number of places would parallel ours, that the desirable thing was to make a double track arrangement, and that was done.

We acquired an undivided one-quarter interest in the line of the Longview, Portland & Northern Railroad extending from Vader Junction, to Longview Junction, Washington, 23 miles, including terminals at Longview, at a cost of $1,114,709. This purchase, together with trackage rights acquired from the Northern Pacific between Chehalis and Vader Junction gave us an entrance to Longview, which we had long desired because of the large volume of traffic, particularly lumber traffic, available at that point. We estimated that after payment of trackage charges and interest at 5 per cent on the investment, the operation had resulted as follows:

4910	1932	1933	1934
Revenues	$341,216	$398,707	$441,698
Expenses, including taxes, rents and interest on investment	217,494	237,634	249,027
Net income after interest on investment	123,722	161,073	192,671

That is a very good showing on the investment.

Q. That is after allowing five per cent on investment?

A. Yes, sir. We have had those results in a period that has been notoriously bad for the lumber traffic, and with any return of the lumber business, that is rated as a normal amount, which will make a substantially better showing on that line.

A branch line from Bonner Junction to Sunset, Montana, was extended 14 miles from Sunset to Cottonwood Creek, at a cost of $151,977, for the purpose of making accessible to our rails a considerable tract of timber.

A modern car shop was constructed at Milwaukee to increase the output of repaired cars and curtail the amount of repair work at other points. It has also increased the efficiency of operation by avoiding outdoor work in inclement weather. The cost of the shop was $1,128,096, and the estimated annual saving $190,271. That was an estimate made at the time that the shop was constructed.

4911 As an illustration of what we are doing there:

We have in the past year built in our own shops

with the proceeds of loans obtained from the Public Works Administration, fifty passenger cars, twenty-three mail and express cars and two cafe dining cars. The cost of building that equipment would of itself make a larger saving than your estimated annual saving, as compared with what we could go outside and obtain that equipment for.

I might say in that connection that this new "Hiawatha" train, which we have put in service, which is pulled by the first built-to-order fully streamlined locomotive ever built, that the cars in that train were all among these cars that I have mentioned here as being built in our shops, and if I may, with some modesty, say it, I do not think there is any train which was ever been built that has had the widespread publicity and the commendation that that train has received from the public. We contemplated a five-car train, but we have increased it to six, and to seven, and now we are up to eight, putting a load on the engine which is somewhat more than was contemplated. In addition, to take care of resort traffic on one and two days a week we are operating it in two sections. That train has handled with the on and off passengers between Chicago and the Twin Cities as high as 478 passengers on one
4912 train in one day. We make six stops with the train between Chicago and St. Paul, a distance of 410 miles, in 390 minutes.

Forgive me for advertising a little.

Director Sweet: I think we had better recess until 9:30 tomorrow morning.

(Whereupon, at 4 o'clock, p. m., a recess was taken until tomorrow morning at 9:30 o'clock, a. m., Wednesday, August 7, 1935.)

4914 Hearing Room B, I. C. C. Building,
Washington, D. C.,
Wednesday, August 7, 1935.

Pursuant to adjournment, the hearing was resumed at 9:30 o'clock a. m.

Before:

Commissioner Porter, Director Oliver E. Sweet, Bureau of Finance, and Examiners R. T. Boyden and J. V. Walsh.

Appearances:

Same as heretofore noted.

4916 PROCEEDINGS.

Director Sweet: You may proceed.

A. H. SCANDRETT testified further as follows:

Direction Examination (Continued).

Q. (By Mr. Swaine.) At the conclusion of yesterday's hearing, Mr. Scandrett, you were describing some of the principal additions and betterments which had been made by the debtor over the past several years, and I believe had just finished describing the Hiawatha.

A. Yes, sir.

Q. Will you continue with that?

A. Terminal facilities at a number of places were equipped for electrical operation, which permits of closing the power house in the summer months when steam for heating is not needed. The cost of electrification at 13 of these points was $400,673, and the annual savings determined after a full year's operation $116,489, which it will be noted is over 25 per cent on the investment.

Shops or power plant facilties were constructed or improved at Miles City, Montana, Sioux Falls, South Dakota, Savannah, Illinois, Western Avenue, Chicago, Mitchell, South Dakota, Deer Lodge, Montana, and Milwaukee, Wisconsin, at a cost of $695,133.

Station facilities were constructed or improved at
4917 great many points. At ten of these points the aggregate expenditures was $441,192.

Block signals and interlocking plants were installed or improved, facilitating the movement of trains at 26 locations at a cost of $244,209, with an estimated annual saving of $88,214.

Major extensions and rearrangement of yard tracks were made at 22 locations at a cost of $577,295.

Mechanical coaling stations were constructed at 11 locations and plants for treating locomotive water supply at 25 locations at an aggregate cost of $566,628.

Expenditures for new bridges, trestles and culverts amounted to $8,238,522.

Rail and track material cost $21,212,626, of which $8,169,784 was charged to investment.

Expenditures for new machinery at important locomotive repair points amounted to $594,375.

In 1931, we constructed a waste reclamation plant at Milwaukee at a cost of $105,432; and the savings the first year amounted to $99,152. It almost paid for itself in the first year of operation.

In the matter of equipment, we have equqipped 25 steam locomotives, 12,917 freight cars, 17 extra locomotive tenders, 2 oil-electric locomotives, 143 passenger cars, 2
4918 barges, which are for use at our Puget Sound operation, and 42 units of work equipment, a total of 13,148 units, at a cost of $35,977.085.

I have only undertaken to enumerate some of the more important items. There are a large number of other items which in the aggregate involve a very substantial expenditure.

Q. Mr. Scandrett, in the opening statement, it was said that the Board of Directors had had the probable or possible readjustment of the financial set-up of the company under consideration for approximately three years. Will you please state to the Commission the problems that the board considered and what the board did in the way of developing a solution of those problems?

A. During the past three years the financial set-up of the company has been a subject of grave concern to the Board of Directors, and to the management, and has been given much thought and study. In the first place, the strict requirements of the equipment replacement covenants of

our mortgages imposed a burden we could not carry with our reduced revenues during the later years of the depression, and called for the purchase of equipment at a time when we already had much more than we could use. The receivers had acquired 7,644 freight cars in 1925-1927, and the new company purchased 12,910 in the years 1928 to 1930. The purchases, coupled with the effects of the
4919 depression, gave us a big surplus of idle freight cars.

On the other hand, we were retiring old cars and upon such retirements the replacement covenants came into play and were not satisfied by the purchase of equipment through equipment trusts, which was the method of acquisition we had employed.

A very serious result of this situation would be the inability of the company to draw down first and refunding bonds to reimburse the treasury for expenditures for additions and betterments until the deficiency in the replacement of equipment was made good, and it could only be made good with equipment since expenditures for additions and betterments other than equipment would not meet the requirements of the mortgages.

Another feature which has given concern is the adjustment mortgage.

During the first two years (1928-1929) of the company's operations there was a substantial surplus after paying the annual interest of over $9,000,000 on the adjustment bonds. In 1930 that interest was earned only in part, and in the subsequent years nothing was earned on those bonds. The interest became cumulative on January 1, 1930, with the result that the accumulated unpaid interest on the issue now (June 30, 1935) amounts to $47,547,160.

4920 In one sense this is not a burden on operations, since the interest is payable only if earned and it has not been earned, but under the terms of the mortgages one-third of income after fixed charges up to $7,500,000, and all above that sum, must go to the discharge of current and accumulated interest on that issue. In view of this retirement, the situation with reference to the adjustment mortgage was highly undesirable.

In the light of the protracted depression, and its extent, and the revision of opinions as to future prospects, the importance of the factors I have mentioned became increasingly evident and gradually as the situation was studied in the light of current developments we all realized that

a revision of the mortgages and of the capital structure would eventually be highly desirable, if not necessary.

During the period of the depression these difficulties which would ultimately confront us were the subject of frequent discussion at meetings of the Board of Directors, of Special Committees and of the officers. It was felt that the appropriate time to take definite steps towards a reorganization of the capital structure was after the depression had reached its lowest point, and there was evidence of recovery therefrom.

I want now to make a chronological statement of
4921 the activities of the Board in dealing with our situation during the past year, culminating with the filing of this proceeding on June 29th of this year. Necessarily I cannot go into all of the discussion at the various meetings of the Board, conferences of Special Committees of the Board and of the officers, discussions and negotiations with officers of the Interstate Commerce Commission and the Reconstruction Finance Corporation.

At the meeting of the Board on August 23, 1934, I presented a forecast prepared by Mr. Sparrow of the earnings and cash situation for the balance of the year, and stated that based on that forecast, while we might be able to meet our interest and principal payments due January 1, 1935, we would not be able to meet those of January 15th and February 1st, 1935. I recommended that the Board appoint a small committee to study the situation and make recommendations to it. The Board directed I appoint such committee, and I named Messrs. Buckner, Dick and Ecker to study the situation with Messrs. Sparrow, Swaine and myself. Mr. Buckner is chairman of the Board of the New York Trust Company. Mr. Dick is with the firm of Dick & Merle Smith, and Mr. Ecker is president of the Metropolitan Life Insurance Company.

This committee, with the exception of Mr. Ecker,
4922 who was in the West, held meetings on September 18th and 19th.

At these meetings, among the proposals which were given consideration, was one to arrange a two or three year moratorium on some of the fixed interest obligations. It was thought by the Committee, and the Board, that such a moratorium would not be any real solution of the company's problems, and, therefore, the company should carry on under its present structure until it knew how

radical a readjustment was essential to meet these problems, and that the readjustment when made should be in final form and should not be made in two steps. Furthermore, it was thought it would not be possible to obtain consents of the thousands of holders of these securities.

At our board meeting on October 11, 1934, I reported on the conference Messrs. Buckner, Sparrow and I had had on September 27th and 28th with Chairman Jones, of the Reconstruction Finance Corporation, and conference Mr. Sparrow and I had with Mr. Boyden, of the Interstate Commerce Commission, on September 28th, regarding a loan from the Reconstruction Finance Corporation to meet our estimated requirements for 1935. I also reported on further conferences with Chairman Jones and with Commissioner Meyer and Mr. Boyden on October 1, 2 and 3.

The discussions indicated a loan application would
4923 be favorably considered and the Special Committee recommended we apply for a loan of $9,000,000, of which $4,000,000 should be available prior to December 31, 1934, and $5,000,000 prior to July 1, 1935. This recommendation was approved by the Board and the loan application was filed October 15, 1934.

On December 13, 1934, a special meeting of the Board was held, at which report was made of conferences Mr. Sparrow and I had had with Director Sweet and Mr. Boyden, of the Bureau of Finance, regarding collateral for our loan from the Reconstruction Finance Corporation.

Another special meeting of the Board was held on December 18, 1934, to consider the report and certificate of the Interstate Commerce Commission, dated December 17, 1934, approving loan by the Reconstruction Finance Corporation in the amount of $4,000,000 to be secured by $6,000,000, principal amount of First and Refunding Mortgage 6 per cent bonds, Series A, and an assignment of the company's equity in the stock of the Milwaukee Land Company, subject to pledge thereof with The Railroad Credit Corporation, with the proviso that a loan of not exceeding $3,500,000 might be made upon the security alone of the first and refunding bonds. After an extended discussion this meeting was adjourned for a few days in order
4924 that the Directors might be afforded a further opportunity to study and consider the matter.

On December 21, 1934, another meeting of the Board was held, and after full discussion it was the opinion of the Directors that the company should borrow $3,500,000 from

the Reconstruction Finance Corporation, with $6,000,000 of our first and refunding mortgage bonds as collateral, and appropriate resolutions were adopted authorizing this action. We received this loan in two installments, one of $2,700,000 on December 31, 1934, and one of $800,000 on January 31, 1935.

In the discussions with Chairman Jones, of the Reconstruction Finance Corporation, with regard to the company borrowing from that corporation money to meet its requirements through the year 1935, and including the interest payments of $2,860,595 due January 1, 1936, in which discussions Mr. Mortimer N. Buckner, Chairman of the New York Trust Company and a director of our company, Mr. Sparrow, our vice president in charge of finance and accounting, participated, as well as myself, the view had been expressed by Mr. Jones that it would be desirable to limit the loan at that time to such amount as would enable the company to carry through the first six months of 1935, and leave for later consideration, when the situation was further developed, the question of an additional loan to meet the requirements of the last six months 4925 and the 1st of January, 1936 payments, it being his feeling that prior to July 1st we would all be in better position to appraise the situation in the light of business developments and Congressional action on bills affecting the railroads, including the matter of regulation of bus and truck companies and water carriers. I should have said that in reaching the conclusion to accept a loan of $3,500,000, instead of $4,000,000 as requested in our application, the Board's action was based on the opinion of the officers of the company that the smaller loan would enable it to meet the situation up to July 1, 1935.

At the Board meeting of February 21, 1935, I presented a forecast of revenues and expenses, and cash requirements for the year 1935, prepared by Vice President Sparrow, and concurred in by our Operating Vice President, Mr. Gillick. In making our forecast in October, 1934, in connection with our loan application, we had estimated that a loan of $9,000,000, $4,000,000 to be available prior to January 1, 1935, and $5,000,000 prior to July 1, 1935, would carry us through 1935, and leave us with cash of $3,000,000 after making January 1, 1936, payments aggregating $2,860,595. On that basis, since we had received a loan of $3,500,000, the amount necessary on July 1st would

have been $5,500,000. The new forecast of February
4926 15, 1935, indicated it would be necessary to borrow
$9,500,000 on or prior to July 1st, the additional amount being required because the later forecast was for revenues substantially less than in the forecast of October, 1934.

There was extended discussion of this report by the members of the Board and it was felt that in the light of the changed conditions the President should bring the matter to the attention of Chairman Jones, and he was directed to do so by resolution of the Board.

The following day a meeting was held with Mr. Jones, which was attended by Mr. Buckner, Mr. Ecker and myself. At this meeting a copy of Mr. Sparrow's forecast of February 15th was given to Mr. Jones and the differences in the two forecasts and the reasons therefor were outlined at length to him. I reminded Mr. Jones that when Mr. Buckner and I had discussed our loan application with him in the fall of 1934, we had told him we believed a reorganization of the capital structure of the railroad would ultimately be necessary because of the burdensome provisions in our mortgages in regard to replacement of equipment not needed in the operation of the railroad, and the incubus of the accumulated interest on the adjustment
mortgage. I also told him that at the Board meeting
4927 on February 21st the tentative conclusion had been
reached it would probably be unwise to ask for a further loan on July 1, 1935, and that we had in contemplation preparation of a plan for the reorganization of the capital structure of the company which we thought we would be able to discuss with him well in advance of July 1st. Mr. Jones said he was in entire agreement with this program, and thought it the best way to handle the situation.

At the meeting of the Board on March 21st there was full discussion of the situation, particularly with reference to interest payments, and payment of principal on equipment trusts due April 1st. The meeting adjourned until March 25th, at which time there was further discussion of the financial position of the company and its cash requirements for the balance of the year. A resolution was adopted that the company should not seek to obtain further loans from the Reconstruction Finance Corporation except in connection with a plan for the reorganization of the capital structure of the company, and the officers of

the company were directed to formulate and submit to the Board an outline of a plan designed to meet the situation. It was decided that the payment of $900,000 principal amount of equipment trust certificates, Series C, maturing April 1, 1935, should be deferred until plans had been further developed, but that the interest on such
4928 certificates and other obligations due April 1st should be paid. On the following evening there was another meeting of the Board at which there were submitted several plans of reorganization, which were discussed at length.

On March 28th I conferred with Division 4, of the Interstate Commerce Commission, consisting of Commissioners Meyer, Mahaffie and Porter, Director Sweet, of the Bureau of Finance, being also present. After reviewing the discussions I had had with them prior to the approval of the loan in December, 1934, I told them the outlook was somewhat less favorable, and even more uncertain, than when we made our forecast in connection with our loan application, and that we had concluded not to ask for additional loans except in connection with a plan for the reorganization of the capital structure, and that in the interest of conserving cash in the meantime we had decided to defer payment of the principal trust notes falling due April 1st, but would pay the interest on such notes, as well as the interest falling due the same day on the general mortgage bonds, Gary bonds and the payments due the General American Car Company. I told them we were working on a plan of reorganization and outlined it in general terms. On the same day I conferred with Chair-
man Jones of the Reconstruction Finance Corpora-
4929 tion and advised him as to the action of the Board with reference to principal and interest maturities on April 1st. I also outlined to him our tentative plan of reorganization.

In developing the plan of reorganization the officers of the company and counsel have also had the benefit of a Special Committee of the Board, consisting of Messrs. Buckner, Dick and Ecker.

On May 1st Mr. Sparrow and I called on Mr. Jones and gave him the tentative plan of reorganization, which he read while we were with him, and later discussed at some length with us. We had a further discussion with him on May 15th.

At the Board meeting on May 16th, I reported on the

meetings which had been held with Mr. Jones since the last meeting of the Board. I told the Board that we had discussed with him two plans dealing with proposed new fixed interest charges of the company, one on the basis of paying full interest on general mortgage bonds, and the other half fixed interest and half contingent on earnings, but cumulative.

On May 21st at another meeting of the Board it was decided that payment of $558,000 principal amount of Equipment Trust Certificates Series J, maturing June 1, 1935, be deferred until plans had been further developed,
but that the company would pay the interest due on
4930 that day on such certificates and on other obligations.

The plan of reorganization was thoroughly discussed and at its conclusion the officers of the company and counsel for the Board of Directors were directed to consult with the principal known holders of the company's bonds and submit to them for discussion and consideration an outline of a plan of reorganization along the lines submitted at the meeting, with such modifications as were agreed upon at the meeting.

On May 23d, 1935, the first meeting was held with representatives of holders of the company's securities, there being present at the meeting representatives of more than 20 trust companies, insurance companies and savings banks, holding in the aggregate in excess of $100,000,000 of the company's securities. The plan was submitted to the meeting and discussed at length. Subsequently there were other meetings with this Committee and with Subcommittees, as a result of which a number of changes were made in the plan.

On June 3, 1935, Mr. Buckner, Mr. Sparrow and I conferred at length with Mr. Jones, and at the conclusion he gave us a letter outlining the terms on which the Reconstruction Finance Corporation would participate in the reorganization.

Q. (By Mr. Swaine.) Is the document which I
4931 show you a copy of that letter? (Handing letter to witness.)

Mr. Swaine: I offer that in evidence as Debtor's Exhibit No. 106.

(DEBTOR'S EXHIBIT NO. 106, Witness Scandrett, received in evidence.)

Q. (By Mr. Swaine.) I think as showing the problem

that was presented with respect to certain of the obligations, it might be well to read the letter.

A. This letter is dated June 3, 1935, and reads as follows:

"RECONSTRUCTION FINANCE CORPORATION,
Washington, D. C., June 3, 1935.

"Jesse H. Jones,
Chairman of the Board.

"Dear Mr. Scandrett:

"With reference to the proposed plan of reorganization for the Chicago, Milwaukee, St. Paul & Pacific Railroad, as tentatively outlined in your memorandum of May 22, 1935, which you, Mr. Buckner, and Mr. Sparrow have been discussing with us:

"It is our understanding that your plan will be filed on or before July 1, 1935, and will contain substantially the following provisions.

"(1) A requirement that only two-thirds of the interest accruing under the general mortgage will be a fixed charge for ten years after the reorganization, the
4932 other one-third being payable only to the extent earned, but accumulating and maturing at the end of the ten years.

"(2) Interest on the 50-year bonds of 1975, and the Chicago, Milwaukee & Gary first 5's of 1948, will be cumulative but payable only to the extent earned. The Board of Directors of the road, however, shall have the right to use earnings available for the payment of this interest for the general purposes of the company, including maintenance, additions, and betterments. But whenever there is as much as ten years' unpaid interest on these bonds, the trustee shall, upon the request of 50 percent of the two issues, declare a default.

"(3) The holders of the adjustment 5's of 2000 will be given preferred stock for the face amount of their bonds, waiving accumulated interest, and the present capital stock reduced and rearranged.

"(4) Each class of security holders will have proper representation on the Board of Directors.

"Upon your representations as to present and prospective earnings of the property and its probable capital and maintenance requirements; and subject to prior approval by the Interstate Commerce Commission, and all terms

and legal details of the various documents being approved by our attorneys; the Reconstruction Finance Corporation will agree, upon request, to lend the company after
4933 its reorganization, all or any part of $12,000,000 at 4 per cent for ten years, to be secured by first and refunding bonds in such amounts as may be specified by the Interstate Commerce Commission and the Reconstruction Finance Corporation, and will further agree to buy $12,600,000 of 4 per cent Equipment Trust Certificates, maturing over a period acceptable to this corporation, the borrower paying not less than 20 per cent cash on the purchase price of such equipment.

"We will also extend our present loan for ten years at 4 per cent upon the security now held.

"Our participation in the plan as above outlined, will also be conditioned upon all legal fees, and fees and expenses of all committees being, in the opinion of our directors, reasonable.

"Our commitment will be on the further condition that the reorganization is completed prior to December 31, 1935.

"Yours very truly,
(Signed) Jesse H. Jones,
Chairman."

Q. (By Mr. Swaine.) Now, Mr. Scandrett, was this letter submitted to the representatives of the fiduciary institutions at the meeting we were having with them?

A. It was.

4934 Q. What were the two points upon which there was disagreement between the Reconstruction Finance Corporation and the representatives of those institutions?

A. The first one on which there was disagreement was that the security holders thought that the period during which one-third of the interest of the general mortgage would be contingent on earnings should be limited to five years. The next point was with reference to Mr. Jones' proposal that the holders of the adjustment bonds waive the accumulated interest.

Q. That amounted to 26 per cent of their principal, did it not?

A. 26 per cent of the principal, or something over $47,000,000. It was the position of the security holders with reference to that that as long as the stockholders were to remain in the picture, that they were entitled to the full

principal and interest on those bonds prior to anything being allotted to the stock, that if they were not given preferred stock for the accumulated interest, as well as the principal, that there was a preference to the stockholders and that their claim for the accumulated interest was prior to any claim of the stockholders.

Now, with reference to the first feature, the matter of the general mortgage contingent interest, I reported
4935 to Mr. Jones several times with reference to the position of the security holders. There was also arranged a meeting with Mr. Ecker, Jr., and Mr. Meyer of the New York Life Insurance Company, which I attended with Mr. Jones, at which Mr. Ecker and Mr. Meyer were present, presenting the views of the security holders.

Mr. Jones was willing to modify the proposal to this extent: That if in the first five-year period of this ten-year period the full interest on the general mortgage bonds was earned for any three years or consecutively for the last two years, the fourth and fifth year, that then, at the end of the fifth year, the interest should be fixed at the full amount.

Still later he made a further concession to the effect that if in any period within the ten-year period the full interest was earned for three consecutive years, that thereafter the interest should be fixed at the full amount, and that latter is the provision that is incorporated in the plan.

Q. That arrangement seemed sufficiently acceptable to the fiduciary institutions, at least to a degree to warrant us going ahead on it?

A. Yes, sir.

Q. Those concessions by the R. F. C. were evi-
4936 denced by letters signed by Mr. Jones, dated June 1, 1935, and June 24, 1935, were they not?

A. That is correct. I have not referred to his concession with reference to the adjustment bonds, and that was that he was finally willing to agree that the holders of the adjustment bonds should receive preferred stock for the accumulated interest, as well as principal.

Q. Now, will you please state the action of the Board on June 21?

4937 The Witness: At a meeting of the board on June 21st I reported on meetings subsequent to June 11th with Chairman Jones of the Reconstruction Finance Corporation, Division 4 and Director Sweet of the Interstate Commerce Commission, and the representatives of the

largest holders of the Company's securities in connection with the plan to effect a reorganization of the capital structure pursuant to section 77 of the bankruptcy act, and said there would be additional conferences with the representatives of the security holders, after which it would be desirable for the board to meet for the purpose of considering further the plan of reorganization and the filing of the petition under the bankruptcy act.

A tentative proof of the plan was presented at the meeting and discussed at length, and certain changes were made.

The board directed that the discussions with the security holders be continued, Mr. Howland Davis voting in the negativs.

Q. (By Mr. Swaine.) Summarizing very briefly, Mr. Davis' objection was on two grounds, was it not?

First, the plan did not give adequate treatment to the common stock; and

Secondly, that it was preferable that there should be no reorganization at all until the trend of earnings be established?

4938 A. My recollection, Mr. Swaine, was the same as your statement in reference to the latter feature. With reference to the former feature, the treatment of the stock, it is my recollection that his position was that at the present time it was not feasible, with all of the uncertainties in the situation, to reach a definite and final decision as to what was the fair treatment as between the different securities, including the stock.

Q. Mr. Davis was put on the board of directors at the instance of the Dutch Administration office, which is a large holder of stock in the company?

A. He has represented those interests, but I think in fairness to Mr. Davis it should be stated that at this meeting he said that he was voicing his own views; that he had not had advice or instruction from his clients; that they might take the contrary position.

Q. Now, going to the next meeting of the board, that occurred on June 27th, did it not?

A. Yes, sir.

Q. In the interval there were daily meetings with the representatives of the security holders, and the plan was actively being molded into its final form?

A. That is correct, Mr. Swaine.

I am only referring here and touching the high points of the meetings of the board; it was a continuous per-
4939 formance that was going on all the time.

Q. What happened at the June 27th meeting?

A. At a meeting of the board on June 27th I reported that the representatives of the security holders with whom we had been in conference had adopted on June 26, 1935, a resolution to the effect that it was the sense of the conference the plan as submitted by the company would probably be acceptable to and would secure the support of the institutions they represented.

I also read to the meeting letters from Chairman Jones, dated June 21st and June 24, 1935, those being the letters I have already discussed, in which he consented on behalf of the Reconstruction Finance Corporation to certain modifications of the requirements contained in his previous letter dated June 3, 1935, with respect to the period of contingent interest on the general mortgage bonds and the waiver of accumulated interest on the adjustment bonds.

There was also presented to the meeting a draft of petition under section 77 of the Federal bankruptcy act.

After discussion, the board approved the plan of reorganization and directed the officers to present such plan on behalf of the company under the provisions of section
77 of the Federal bankruptcy act, and also approved
4940 the form of petition and directed its filing, Mr. Howland Davis voting in the negative.

There were filed with the minutes of the meeting letters from Mr. Howland Davis and Mr. Walter W. Colpitts.

Q. (By Mr. Swaine.) Now, Mr. Scandrett, were there also submitted to the board at that meeting a letter—or letters: First, one from Mr. Frederick W. Walker—signed by him as chairman?

A. Yes, sir; that was the letter transmitting the resolution of the committee, as I recall it.

Q. And one signed by Dwight S. Beebe, vice president of the Mutual Life Insurance Company of New York?

A. Yes, sir.

Q. I show you two documents:

The first is a copy of the minutes of the meeting of the board of directors of June 21, 1935, is it not, to which you have referred?

Mr. Swaine: Mr. Director, I offer that as debtor's exhibit No. 107.

(EXHIBIT NO. 107, Witness Scandrett, marked for identification.)

Mr. Swaine: The second of the documents is a copy of the minutes of the meeting of the board of directors of June 27, 1935, with copies of the letters submitted
4941 at that meeting, is it not?

A. Yes, sir.

Mr. Swaine: I offer that as debtor's exhibit No. 108.

(EXHIBIT NO. 108, Witness Scandrett, marked for identification.)

Q. (Mr. Swaine.) Without reading all of the letters in full, will you summarize briefly the position taken by Mr. Colpitts at that board meeting?

A. Well, in a word, Mr. Colpitts' view was that the conditions were so uncertain and so unusual that it was not possible to make a plan based on any reliable forecast as to revenues over a period in advance, that if you made a plan during these uncertain times, if you overestimated the revenues your plan would break down; if you underestimated the revenues and did better than expected, it might be that your treatment of the securities would not be as favorable as it should be in the light of that experience.

He concluded his letter, however, with the statement that if a large majority of the board favored going ahead at this time, that he would vote with them.

Q. Did he also—

A. (Interposing.) Mr. Davis, being the—

Q. (Interposing.) Before you leave Mr. Colpitts—
4942 A. (Interposing.) I say, Mr. Davis, being the only one who voted in the negative, Mr. Colpitts voted for our program.

Q. And did he not also express the view that if there were to be a plan at all at this time he thought this was the best plan that could be worked out?

A. He said he thought this was practically the best plan.

Q. Mr. Davis reiterated in his letter substantially the position which you explained he took orally at the meeting of June 21?

A. Mr. Davis did do that, and it was his suggestion that we just stop paying interest and wait and let somebody put us into receivership or bankruptcy.

Q. I think it is worthwhile to read in full the letter signed by Mr. Walker, in view of the fact that it repre-

sented the views expressed in this conference of holders of over $100,000,000 worth of our bonds.

Director Sweet: This letter is in the record.

Mr. Swaine: It has gone in as an exhibit, but I think it is worthwhile to have it in the running story. It is a comparatively short letter.

Director Sweet: All right, if you want it read, but I suggest that it not be read into the record.

Mr. Swaine: I think it should be read here off the 4943 record so that you gentlemen can hear it.

Examiner Walsh: Can you state what issues that covered?

Mr. Swaine: Mr. Burgess represents them, and I think he can give it more accurately than I can. I would say offhand that it represented some of the prior issues.

Examiner Walsh: Were the holders who attended the meeting men who held bonds in several issues, or was any issue represented by any individuals that held only that issue?

Mr. Swaine: We made a very careful list of the holders of our bonds to see if it were possible to get representatives of individual issues who were holding any other issues of our obligations, and we found that among the holders of $1,000,000 worth of our bonds or more—that is, taken in the aggregate—there was no holder who did not hold more than one issue of obligations. We also found that when we went to the individual issues of our bonds, my recollection is we could not find any holder of half a million dollars' worth of one issue who did not also hold bonds of another issue, and in order to have gotten any representatives without what has been perhaps loosely called "a conflict of interests", you would have had to eliminate all of the large holders of our obligations.

4944 Off the record, will you read that letter?

(The letter referred to was read aloud by the witness.)

The Witness: (Continuing.) Mr. Swaine, I see this letter refers to those people owing us this money or holding these securities. I think that we had better have this checked.

Mr. Hoffman: May I ask a question of Mr. Swaine, through the Commission?

Director Sweet: Yes.

Mr. Hoffman: In connection with Mr. Swaine's last

statement concerning efforts to locate large security holders, I would like to ask Mr. Swaine whether any effort was made to locate holders of 100,000 or more—those security holders who did not assent to what has now become the plan of reorganization?

Mr. Swaine: No effort was made to contact all holders of 100,000 or more, because it would have been too large a group.

As to the Milwaukee and Northern, I have been in conference with counsel for some of the holders of those bonds, representing very large amounts, and I was convinced that there was no plan of reorganization which would be acceptable to them.

Mr. Hoffman: May I again ask Mr. Swaine, through the Commission, whether those holders to which Mr.
4945 Swaine refers constituted only holders of bonds who had assented to the plan?

Mr. Swaine: No; they constituted holders who had not assented, and it was clear to me that nothing short of cash for principal and interest, plus counsel fees, would satisfy them.

Mr. Hoffman: Mr. Swaine has raised the question here, and I would like to know whether he refers to me or not.

Mr. Swaine: No; I never saw you before you came here.

Mr. Hoffman: I would like to make it clear on the record, and to have Mr. Swaine make it clear on the record, that he does not refer to me.

Mr. Swaine: I said I never saw you before you came here, and I had no conference with you at any time.

Mr. Hoffman: But I would like his statement on the record as to whether or not this statement concerning counsel fees applies to me or not.

Mr. Swaine: I do not know the holders of the bonds who came to see me

Mr. Hoffman: Yes, but you made the statement on the record that nothing short of payment of principal and interest plus counsel fees would satisfy the holders of bonds.

I represent $100,000 of those consolidated mortgage bonds, and I want to know whether that statement
4946 refers to me or not.

Mr. Swaine: I said that some holders of bonds discussed the matter with me; I don't know whether they were your clients or not. They told me they represented a very large amount of bonds, a very substantial part of

the non-assenting bonds, and they wanted principal and interest plus counsel fees; I don't know whether they are your bonds or not; it was not you individually.

Mr. Hoffman: Was it anybody connected with my firm?

Mr. Swaine: What is the name of your firm?

Mr. Hoffman: I am associated with the firm of Guggenheimer & Untermyer.

Mr. Swaine: It was not anybody from that firm.

Mr. Hoffman: Are you prepared to concede that the holders of the bonds represented by me did not demand payment in cash of principal and interest plus counsel fees?

Mr. Swaine: No; I will not concede it; I don't know.

Mr. Hoffman: Do you make the statement that the demand was made?

Mr. Swaine: No.

Mr. Hoffman: I will make a statement for the record, Mr. Director, that never at any time, while our clients have demanded a payment of principal and interest on those bonds, and as they claim the legal right to do—

4947 never at any time to anybody—the railroad, Mr. Swaine's office, or anybody else—demanded payment of any counsel or other fee or disbursements of any kind in connection with the payment for our bonds.

Mr. Swaine: Let us have it clear—you are demanding payment of principal and interest?

Mr. Hoffman: Yes; I so stated.

The Witness: May I resume?

Director Sweet: Yes.

The Witness: The petition, together with the plan of reorganization, was filed in the United States District Court for the Northern District of Illinois on June 29th, and a copy of the petition and plan were at the same time filed with the Interstate Commerce Commission, with a letter from me requesting a hearing as soon after July 22d as would meet the convenience of the Commission.

Mr. Swaine, do you want to go into the discussion of the plan now, or shall I proceed with this testimony?

Q. (Mr. Swaine.) I suggest we defer for a moment the specific discussion of the plan, and turn to the question of whether or not the St. Paul's plight is the result of bad management, as has been intimated in certain letters which have been published, letters directed to the Interstate Commerce Commission, which have been given broad publicity

in the press, and I would like to have you make a
4948 statement as to whether or not you think the present plight of the road is in any wise attributable to inefficiency of operation.

A. I would like to say, by way of preface, that I am not an operating man, but I have, for a good many years, observed and studied the field of operations and since I came to The Milwaukee Road I have, of course, kept in very close touch with its operations.

Many of the figures that I will give here are from compilations which are currently made by our people, in checking their performance with that of other railroads.

I want first to speak of the car department:

Beginning in 1928 our car department adopted a four-year repair cycle on freight cars, which would mean that every fourth year each car would go to the shops for general overhauling. That is what is known as schedule repairs.

In the past five years, because of the falling-off in traffic and the large number of cars not needed for current business, this schedule has not been maintained, but the figures as to the cost of making the schedule repairs are illuminating:

The average cost in 1926 was $176, and in 1929 $199,
since which time the cost has declined very substan-
4949 tially, to $101 in 1933 and $111 in 1934.

Similarly, the cost of repairs per freight-car mile have been reduced from .0085 cents in 1928 to a low of .0048 cents in 1933 and .005 in 1934.

Evidence that our freight and passenger cars are better maintained than formerly is the fact that while accidents due to equipment failures averaged 119 per year for the five-year period ended in 1929, the average for the five years ended in 1934 was 53.

The number of personal injuries, including minor injuries, was 1,530 in 1925, and was reduced each year thereafter until the figure in 1933 was 87, with an increase to 105 in 1934.

I should like to say in that connection that not only in the car department but throughout the railroad we have in the last six years made a very intensive drive on the safety work and have improved our showing very substantially, not only actually in the reduction of the casualty rate, but relatively in an improved position as compared with other railroads of the classification of largest rail-

roads; we have gone from position No. 13 to position No. 2 in casualty rate.

Q. (By Examiner Walsh.) How is the casualty rate figured—on a ton-mile basis or a car-mile basis?

A. They don't state it on either basis, Mr. Walsh;
4950 the casualty rate is based on casualties per million man-hours.

Q. (By Examiner Boyden.) Have you analyzed the reduction in cost of scheduled repairs to determine whether or not they have been due in part to reduction of the amount of use as well as of increased efficiency?

A. My information from the car department is that that is not correct—that with this four-year schedule you do substantially the same work on those cars each time they come in for the schedule repairs, and that the reduction in cost is a measure of the increased efficiency with which we are doing the work.

Q. Well, of course, the cars which you have in service but not in actual use—they are not scheduled for repairs?

A. No. But I have pointed out to you that in the past three or four years we have not made the schedule repairs to the same number of cars, and I should say that the cars in the last three or four years as to which we have made the schedule repairs have probably seen as much service in the meantime as those in prior years. The number of freight cars damaged in trains and yards in 1928 was 4,283, and in 1934 2,006. The miles per hotbox on passenger trains in 1928 was 479,312, and in 1934 1,294,526.

4951 The miles per hotbox on freight trains in 1928 was 140,067 and in 1934 411,335.

The percent of Federal defects based on Interstate Commerce Commission inspection was 1.3 in 1928 and in three of the last four years has been .8 of one percent.

Our claim payments account defective equipment in the year 1928 was $65,009, since which time each year has shown a reduction until the figure in 1934 was $20,942.

The simple average of the cost of repairs per freight-car mile for our railroad for the years 1928 to 1934—which comprises the period of operation of the new company—was .007 cents.

We have the corresponding figures for the Santa Fe, Burlington, Northwestern, Rock Island, Great Northern, Northern Pacific, Illinois Central, Southern Pacific (Pacific System), Baltimore & Ohio, Missouri Pacific, and

Nickle Plate—those are the lines that interchange their figures with us—which run from a low of .006 cents to .0117 cents.

The Milwaukee, with one exception is the lowest of all these railroads.

For the same period the Milwaukee's cost of repairs per unit owned was $76. The others range from a low of $78 to a high of $135. Of course, the mileage per unit is a factor in that, and the mileage per unit owned
4952 in the case of the Milwaukee is 10,817. The other roads range from a low of 7,356 to a high of 17,685.

The next subject I want to speak of is the locomotive department:

In the seven-year period from 1921 to 1927, the miles per engine failure ran from a high of 85,137 to a low of 28,111, and I am taking that seven years immediately prior to the beginning of operations by the new company, and comparing it with the seven years that the new company has been in operation.

In the seven-year period from 1928 to 1934, the range was from a high of 118,983 to a low of 74,121.

In passing, it might be stated that is also evidence of the fact that we are keeping up to the condition of our motive power, because our poorest performance in this entire seven-year period is almost as good as the year of our best performance in the preceeding seven years.

Now, in the seven-year period from 1921 to 1927 the pounds of coal per 1,000 gross ton miles range from 137 to 168, while in the seven-year period from 1928 to 1934 the range was from 120 to 130.

It will be observed that our poorest year of the last seven years was better than our best year of the preceding seven years.

In the seven-year period from 1921 to 1927 the cost
4953 of steam locomotive repairs per locomotive mile ranged from 22.15 cents to 32.71 cents. In the seven-year period from 1928 to 1934 the range was from 14.33 cents to 19.33 cents.

Again, our highest cost in this last period was lower than our lowest cost in the preceding period.

As to electric locomotive repairs, the range in the first period is from 18.29 cents to 24.01 cents, and in the second period from 10.98 cents to 15.71 cents.

Enginehouse expense per locomotive mile for the period 1921 to 1927 ranged from 5.59 cents to 11.84 cents, and for

the period from 1928 to 1934 it ranged from 3.86 cents to 5.2 cents.

We exchange figures with 11 other railroads: Burlington, Northwestern, Rock Island, Great Northern, Northern Pacific, Santa Fe, Union Pacific, Southern Pacific, Illinois Central, Soo Line, and Great Western, with reference to the results from inspection of locomotives by officials of the Interstate Commerce Commission. For the year ending June 30, 1934, six percent of the locomotives of both the Milwaukee and the Burlington were found defective.

That does not mean that the locomotives were not in condition to operate, but any defect is noted as a defect.

4954 The percentage for the other railroads named ran from seven percent to 33 percent.

In that year, as a result of these inspections, one locomotive of the Milwaukee was ordered out of service. The figures for the other roads ran from 3 to 28. The percentage ordered out of service to total owned in the case of the Milwaukee was .06 percent. The figures for the other railroads ran from .35 percent to 8.43 percent. Now, I want to speak about the track.

Q. (By Examiner Walsh.) Just a minute, Mr. Scandrett.

A. Yes.

Q. Is it true that while the cost of locomotive repairs per locomotive mile was being reduced, that the load carried by the locomotive was also increased?

A. Yes, with the exception of our train miles, up to the beginning of the depression—I mean, our tonnage was gross tonnage and net tonnage per train mile, and it was on an ascending scale.

Since then, as a result of the depression and light traffic, particularly on light-traffic lines, our train-mile loading, or train loading, has not kept up. I think the figures that I am giving shortly as to the track are of especial significance, and they are a support for the statement that Witness Sparrow has given as to his estimates of expendi-

4955 tures in future years for maintenance of track and structures.

At the time the new company began operations over 19,000,000, or 55.7 percent, of the ties in main tracks were untreated.

Of the treated ties, all but .1 percent were zinc treated.

Beginning in 1928 we began to treat an increasing number of our ties with the oil-creosote treatment, which, while more expensive, is much more effective than the zinc chloride treatment.

By the end of this year we will have placed in track over 8,500,000 oil-creosote treated ties, or 25 percent of the ties in the main tracks.

We have also increased the number of zinc-treated ties by about 3,500,000, with the result that at the end of this year the total untreated ties in our main tracks, will be 18.5 percent, or less than one-third of what it was when the new company began operations.

In other words, during the period of the new company's operations the percentage of treated ties in main tracks has increased from 44.3 to 81.5.

We have not yet felt the benefit of this increased use of treated ties, since the ties now being taken out of the track are very largely untreated, but with the longer life of the treated ties used in replacement our maintenance ex-
4956 pense for tie renewals will be sharply reduced.

Now, as to tie plates:

The new company has very greatly increased the number of tie plates and is also using a larger and better plate. The old plate was six by eight and a half inches and weighed seven pounds, while the new standard adopted in 1927 is seven by ten and a half inches and weighs 11.3 pounds.

On the first of January, 1928, there were 18,000,000 tie plates in our main track, 26.1 percent of the ties being plated. At the end of this year we will have over 42,000,000 tie plates in track and the percentage of plated ties will be 62.1.

Stated in another way, in the eight-year period from 1920 to 1927, inclusive, there were purchased by the old company 10,338,965 tie plates, or an average of 1,292,371 per year, while in the succeeding eight-year period from 1928 to 1935, inclusive, we purchased 30,159,397 plates, or an average of 3,769,925 per year.

In the matter of tonnage of tie plates for the 14 years ended in 1927, the total purchases were 98,394, or an average of 7,028 tons per year, while in the seven-year period beginning in 1928, with 1935 estimated, the total tonnage is 150,000, and the average per year 18,779.

4957 Building-up rail ends:

Beginning with 1928 we have restored to normal

section by welding new metal onto the battered ends of rail and then grinding down to uniform surface a total of over 2,000 track miles.

Rails of uniform hardness wear more rapidly at the ends. This is referred to as rail batter. This makes rough-riding track, increases the wear on angle bars and ties and the maintenance expense of tamping-up joints, and shortens the life of the rail.

By welding new metal on the end of the rail for a distance of three or four inches back from the end of the rail, the rail can be brought back to true surface, thereby prolonging the life of the rail five or six years.

Building-up rail ends costs a dollar per joint, or $320 per mile, as compared with a cost of $1,000 per mile to take up the rail, saw off the ends, and relay it in the track.

This latter amount will be increased $300 per mile if surfacing of the sawed rail is necessary.

Heat-treating new rail:

Since 1928 the ends of new rail have been treated to harden and toughen them to resist batter. By the end of this year we will have so treated 1,618 track miles.

4958 We take considerable pride in that, because, while other railroads have now adopted it, we were the pioneers. Our present chief engineer, Mr. Penfield, experimented with this, and he is regarded as the father of the practice.

It proved very effective in lengthening the life of the rail. Rail that was heat-treated seven or eight years ago now shows practically no sign of batter, and it might get to the point where the middle of the rail will wear out before the ends.

Q. (By Director Sweet.) That heating by the ends can only be done in the case of new rail or where the rail is taken up?

A. After the batter has started it is not as effective; the steel companies are working on that. I think probably the logical place for that to be done would be in the steel plants, but they have not worked it out yet, and so our practice in recent years is to buy new rail and heat-treat it before we put it into the track.

During 1928 and 1929 more new rail was laid than in any previous years, the figures being 60,859 tons in 1928, and 63,934 tons in 1929. In the same years we laid 42,536 and 32,503 tons of relay rail. In 1930 we laid 38,248 tons of

new rail and 7,581 tons of relay; in 1931 we laid 14,439
tons of new and 19,572 tons of relay; in 1932 12,957
4959 tons of new and 13,035 tons of relay, and in 1933 we
laid no rail, and practically none in 1934. The program for 1935, in which we are now engaged, calls for 30,238 tons of new rail, and 15,277 tons of relay.

We also have increased our standard section from 90 and 100 pounds to 112 pounds, and on the double track between Chicago and Milwaukee and Chicago and Savannah to 131 pounds. This heaviest rail is also used on curves in the Rocky Mountains, the Bitter Root Mountains, and the Cascade Mountains.

Bridges:

In January, 1928, the lineal feet of permanent bridges were 361,045. By the end of 1935 we will have 422,171 feet, an increase of 61,126 feet or 16.9 percent.

The corresponding figures for creosoted bridges are 11,600 and 15,500, an increase of 3,950 feet, or 33.6 percent.

For untreated bridges the figures are 568,415 and 501,818, a reduction of 66,597 feet, or 11.7 percent.

It shows a substantially better situation with respect to bridges than we had seven years ago.

Rail anchors:

In the 14-year period beginning in 1914 the total number
of rail anchors purchased was 11,606,800, or an aver-
4960 age of 829,060 per year. In the seven-year period
beginning with 1928—with 1935 estimated—the total purchases were 9,957,111, or an average of 1,244,640.

Rail, where not anchored, creeps in the direction of predominating traffic. This slues and bunches the track ties, moves them off their firm bed, makes rough-riding track, causes excessive expansion and rail batter at some points, and entirely eliminates expansion between rails at other points.

Tracklaying, ballasting, and bridge-and-building work:

We have reduced our cost of track and bridge maintenance by putting rail-laying gangs on a production basis, developing methods to speed up the work and reduce the cost without lowering the quality of the work.

I might say in that connection that here, again, we are the pioneers in this mass-production style of work in track maintenance. In 1927 our cost per mile for labor and work-train service used in relaying rail was $847 per mile.

In 1932, the last year in which we laid rail requiring such

service, the cost was $370 per mile, a reduction of over 50 percent. In our operations this year the cost will be further reduced.

Ballasting of new rail has been organized on a similar basis with large ballasting gangs, which has been
4961 provided with machines to do the work more effectively. The cost of this work in 1927 was $1,754 per mile. In 1932, the last year in which we did any appreciable amount of this work, the cost was $549 per mile, again a reduction of more than 60 percent.

Our bridge-and-building work was similarly organized. The work is programmed and the materials delivered as needed. The payroll for the bridge-and-building department in 1927 was $2,508,330. In 1930 it was $1,851,445 and in 1931 $1,367,171. There was little difference in the amount of bridge work done in the years 1930 and 1931.

I attribute a substantial part of the reduction to greater efficiency in the organization for handling this class of work.

In 1935 it is estimated this payroll will be $950,000.

Now, in that connection, because it has to some extent been made possible by this change in the method of maintenance work, I would like to state that we have greatly reduced the number of our sections, from 1,558, in 1927, to 939 in 1935. Now, the reduction of those sections means not only less labor but the discontinuance of maintenance of motor cars, section tool houses, and so forth, at 619 points. The average length of a section has been increased from seven to 12 miles.

4962 Q. (By Commissioner Porter.) Will the work on a section of 12 miles be as effective on the work on one of only seven miles?

A. I think they can do it probably better and more effectively than they did in the old days with the handcars. The sectionmen all have motorcars now.

Transportation:

In the seven-year period—

Q. (By Examiner Walsh.) Before you go on to that, will you also reduce the number of men per section?

A. Yes, sir.

Q. Have you the figures on that?

A. I have no figures on that, but our section gangs in some territories have averaged one man—a section foreman.

Q. Does he maintain 12 miles of track?

A. Where we put those large gangs to work, there is practically no maintenance of track for three or four years after they go over it.

When I say "one man" that is an extreme statement, Mr. Walsh, but our section forces, our section gangs, are smaller than they were. They are larger right now than they were a year or a year and a half ago.

That is correct, is it not, Mr. Gillick, that we have more men in our section gangs now than we had a year and a half ago? Do we not?

4963 Mr. Gillick: Yes, sir.

Q. (By Examiner Walsh.) You have reduced the cost for tracklaying and the cost of reballasting in the last four or five years?

A. For seven years.

Q. Do you think you get just as good a job for the lower price?

A. I really think we get a better job.

Q. Why did you not discover this matter before?

A. Well, I don't know; I suppose when we stop discovering things we will be in a bad way, won't we? The usual way of maintaining track, for many years, on the railroads, has been entirely through the section gang. Now, we are getting away from that.

Transportation:

In the seven-year period from 1921 to 1927 the cost of conducting transportation per 100 gross ton miles ranged from 13.63 cents to 21.12 cents. In the period from 1928 to 1932 the range was from 10.95 cents to 12.80 cents.

The cost of handling less-than-carload freight has been reduced from 67.21 cents per ton in 1929 to 56.70 cents in 1934.

Switching service:

Cost of switching service per car in the seven-year
4964 period from 1921 to 1927 ranged from 33.78 cents to 37.03 cents, and from 1928 to 1934 the range was 31.21 cents to 36.22 cents.

Overtime:

The percentage of overtime of total payroll has been sharply reduced from 7.3 percent in 1929 to 4.5 percent in 1933, and 4.6 percent in 1934.

Dining- and buffet-car operation:

Notwithstanding the very great shrinkage in total revenues, the net loss has been reduced from $497,765 in 1929 to $207,210 in 1934.

Parenthetically I might add that we have also very substantially reduced the charge for our dining-car service.

Total payroll; average number of employees:

The year ended June 30, 1913, the average number of employees on The Milwaukee Road was as 62,051, and the total payroll was $45,209,880. Seven years later, in 1920, there were almost the same number of employees, 62,384, but the payroll had more than doubled, to $110,515,491. In the first year of the new company's operations, 1928, there were 48,129 employees, which figure was reduced year by year to 26,493 in 1933. There was a slight upturn in 1934 to 28,065.

There will be a somewhat larger number in 1935.

4965 Reductions, of course, in recent years are due to the smaller traffic volume.

Longer locomotive runs and shop consolidations:

We have extended locomotive runs between terminals in various territories. On our Chicago-Omaha line engines are now running a distance of 488 miles where formerly the run was divided at Savanna, 138 miles.

In the Chicago-Minneapolis territory, 420 miles, locomotives formerly changed at La Crosse are now making 140 additional miles running through.

In the Minneapolis-Harlowtown territory, engines previously changed at Mobridge, 385 miles, are now running through to Harlowton, 917 miles.

This is one of the longest engine runs in the country.

Many other extensions have been made on various parts of the railroad in both freight and passenger service. This has resulted in abandoning engine terminals in some instances and greatly reducing the forces required in others.

We have also discontinued some of our principal locomotive shops, such as Dubuque, Iowa, Austin, Minnesota, and Miles City, Montana, concentrating the work in fewer places where more modern machines and tools are available. The extensions of engine runs and the closing of engine terminals and shops are reflected in the cost of repairs to locomotives per mile, which in 1927 was

4966 22.15 cents and in 1934 14.78 cents.

Our enginehouse expense per locomotive mile in 1917 was 5.59 cents and in 1934 3.86 cents.

Remote-control interlocking; highway-crossing signs:

Since 1928 we have installed remote-control interlocking at various points at a cost of $258,685, which resulted in an annual payroll reduction of $151,666.

Highway-crossing signals have been installed at various points at a cost of $288,254, that resulted in relieving crossing watchmen and others, effecting a saving annually of $150,483.

We have expended $21,107, bringing meter readings through one instead of various meters, resulting in an annual saving of $25,000, and further studies are being made that will result in additional savings.

Consolidation of divisions:

In 1927 we had 28 superintendents with divisional organizations. In 1930 we started to consolidate divisions, and we now have but 15 divisions operated by one superintendent's organization. In addition, the general superintendent's organizations were abolished in the four districts. Two of these officers remain in other capacities. The result of these consolidations is a decrease in payroll of more than $100,000 per annum. In addition, it has increased our ability to coordinate the handling of the
4967 business through terminals, which has resulted in reductions in yard operations and the expediting of the business moving through the terminals now under the jurisdiction of one division rather than two.

Abandonment of second track:

Owing to the small volume of traffic, and in order to save maintenance expense, we have discontinued double-track operation on four sections of the Hastings and Dakota division, aggregating 85 miles, and five sections of the Iowa division, aggregating 101 miles. The estimated annual reduction in expenses is about $180,000.

Studies made of the volume of traffic handled on the two lines in 1928 and 1929 indicated that the double track which has been discontinued will not be required to handle the business of these two years.

Freight-claim payments:

In the seven years from 1921 to 1927 the class I railroads of this country paid out in loss-and-damage claims to freight from 2.36 percent to .75 percent of freight revenues, or a simple average of 1.14 percent. For the same period the Milwaukee's figures were 1.23 percent. In the seven-year period from 1928 through 1934 the average for all roads was .72 percent and for The Milwaukee Road .57 percent.

All roads improved their showing very substan-
4968 tially, but The Milwaukee Road reduced its ratio 53.65 percent. In other words, in the first period we were

not quite as good as the average, and in the second period we were rather substantially better.

The payout in dollars was reduced from $3,373,271 to $339,317 in 1933, and $349,025 in 1934.

I am glad to say that our 1935 figures on payout are running less than in 1934.

Accounting:

In the past few years a good many changes have been made in accounting work and methods which have increased efficiency and effected substantial economies. Among such changes I mention balancing interline received freight accounts, establishment of central station accounting bureau, and a central typing and computing bureau, working out arrangements for settling interline accounts on less-than-carload traffic by establishment of road-to-road percentages via certain junctions and groups, centralization of train and engine timekeeping, consolidation of division accounting forces into district offices, and dining- and sleeping-car accounting bureaus. These changes I have enumerated have effected annual savings of over $150,000.

Branch-line abandonments:

We have made a comprehensive study of our 4969 branch lines to determine whether they are an asset or a liability. We took 45 of the lines with the lightest traffic, aggregating 946 miles, and the analysis in each case was for a representative period and included ascertainment of the actual local and system revenues on business originating or terminating on the branch line. From these total revenues we deducted all expenses and taxes local to the line, which would be avoided if the line were abandoned, and the system expense of handling the branch-line tonnage to and from the junction. Consideration was also given in each case to the prospective requirements as to maintenance, bridge renewals, et cetera.

Of the 45 branch lines so investigated, the conclusion was reached that 17 of them, aggregating 239 miles, should be abandoned as unprofitable. Applications were made to, and authority received from, the Interstate Commerce Commission, to abandon, except as to one line, on which decision is still pending. All of the mileage for which authority was received has been abandoned.

Four additional branch lines, aggregating 48 miles, were abandoned in connection with coordination of facilities

where the service was retained, our tracks abandoned, and joint use of other lines' tracks substituted.

Now, Mr. Director, you handed Mr. Sparrow yes-
4970 terday a list of branch lines headed "Properties of Doubtful Earning Power".

Mr. Swaine. For the sake of the record, that can be identified as exhibit No. 98.

The Witness: We have gone over that list, and I can report to you as to which lines in that list were included in this list of lines which we have investigated:

Wabasha, Minnesota, to Chippewa Falls, Wisconsin, 60 miles—the section of line from Red Cedar to Menomonie—a distance of 15.7 miles—we investigated that and reached the conclusion that the line should be retained.

The line from Eau Claire to Chippewa Falls, Wisconsin, a distance of 12 miles, has been abandoned, and arrangements have been made with the Soo Line for handling our business on a per-car basis; that was done a number of years ago.

Farmington, Minnesota, to Wells, Minnesota, a distance of 38 miles: On account of business handled on the main line west of Cologne, we decided that this line should be retained. There is quite an extensive beet-sugar development in that territory, and that was one of the reasons for the retention of that line.

Midland Junction, Minnesota, to Faribault, Minnesota, a distance of 88½ miles. The section of line from Midland Junction to Jumbo Falls, 35½ miles, has been abandoned.

4971 The line from Jumbo Falls to Faribault, a distance of 53 miles—we reached a conclusion that that should be retained.

Roscoe, South Dakota, to Orient, South Dakota, a distance of 41 miles: We reached a conclusion that that line should be retained.

Glencoe, Minnesota, to Hutchinson, Minnesota, a distance of 54 miles: Our conclusion was to retain that line.

Reno to Isinours, Minnesota, 64 miles: We reached the conclusion that that line should be retained.

Similarly, the same conclusion was reached with reference to the line from Waukon Junction to Waukon, Iowa, a distance of 22 miles, and from Maxomanie to Prairie du Sac, Wisconsin, a distance of 10 miles.

Janesville, Wisconsin, to Shullsburg, Wisconsin, a section of the line from Gratiot to Shullsburg, 11 miles: We

studied that and reached the conclusion that that should be retained.

Branches north of Merrill on the Star Lake, Wisconsin, line—the section of the line from a point a few miles south of Gleason to Kalinke, Wisconsin, has been abandoned; we reached the conclusion that the rest should be retained.

Turkey River to West Union, Iowa, a distance of 58.25 miles: We reached the conclusion that that line 4972 should be retained.

Tripp to Stickney, South Dakota, a distance of 41.1 miles: We reached the conclusion that that line should be retained; also the line from Napa to Platte, South Dakota, a distance of 82.4 miles.

Andover, South Dakota, to Cogswell, North Dakota, a distance of 51 miles: We have an application pending with the Commission to abandon the section of the line from Britton, North Dakota, to Cogswell, North Dakota, a distance of eight miles. Our study indicated that the rest of that line should be retained.

Farmington, Minnesota, to Hastings, Minnesota, a distance of 13.68 miles—that line has been abandoned.

Bagley Junction, Washington, to Enumclaw, Washington: The coordination plan has been worked out with the Northern Pacific whereby a part of our line and a part of the Northern Pacific lines have been abandoned, and there is a single operation there.

Now, as I say, we picked out the 45 lines which seemed to us to raise the biggest question as to whether or not their operation was profitable. Of those 45 lines, 15 of them are on the list you submitted to Mr. Sparrow.

Q. (By Examiner Boyden.) When was that study made, Mr. Scandrett?

A. It was not made at any particular time—I 4973 would say over the last three years.

Q. Was it made in the light of traffic conditions in 1932 and 1933?

A. Well, yes, and we went back and saw what the line had done under other conditions, but we reached our conclusions as to what they were doing at the time and what reasonably might be expected of them. If we studied a particular line at a time of severe drought, we did not presume that that drought was going to continue indefinitely in the future.

We have, in a number of cases, made a study one year, and been a little doubtful as to what we ought to do about

it, and we waited another year or two and made another study. Sometimes it has resulted in the conclusion that we should ask permission to abandon, and sometimes that we should retain it.

Q. Is a copy of that study available?

A. Well, it is not a study, it is a number of studies; each is an individual study. I think we could, without difficulty, furnish it—could we not, Mr. Sparrow?

Mr. Sparrow: Many of them are detailed studies, Mr. Boyden; on others, we put a yardstick measure on by taking the number of tons per mile per year, roughly speaking, 1,000 tons per mile per year on a branch line; the system revenue is about $3, or less than $3. Some of
4974 those branch lines run much higher. Out in South Dakota, if you have a good wheat crop and a long run to Minneapolis, it will be better, but if you take $3 and allow $1.50 to the branch line for the 1,000 tons for a mile, that would be $1,500 a mile. They will retain the railroad in the same service, and they will retain it at $1 a mile; that would be 600 miles a year, and for maintenance it would be $12,000; the other half on the system where there is little or no additional expense, substantially all of that is profit. Some of these studies were made by that yardstick, but we say that does not justify the company in making a detailed study and an analysis; in other cases we have done that.

Examiner Boyden: You could submit an analysis for the record where you have the detailed studies?

Mr. Sparrow: Yes, sir.

The Witness: Now, is there anything further you would require on that, Mr. Director?

Q. (By Director Sweet.) I take it that on the lines on exhibit No. 98 which you have not mentioned, that you have not made any particular investigation to determine whether they are profitable or otherwise?

A. That is correct.

Now, you take one of the lines named here—from La Crescent, Minnesota, to Wessington Springs, South
4975 Dakota. That is a large part of our southern Minnesota division—over 400 miles. It is territory in which we pioneered in the '80's and, of course, since then, there have been other railroads go in there, but we are the original line in that territory, and very good-sized towns have been built up there, and I question very much whether

either we or the Commission would feel that it would be in the public interest to abandon that operation.

Examiner Boyden: Of course, this is not a suggestion that those lines should be abandoned.

The Witness: Of course; I understand that.

Examiner Boyden: It is a list that was made and submitted yesterday simply upon consideration of traffic densities which are submitted here.

The Witness: Yes.

Director Sweet: And the purpose in asking about it was to determine to what extent you had investigated those particular lines to determine whether or not they are profitable.

The Witness: There is one other feature that I want to refer to. In the investigation by the Commission of the Chicago, Milwaukee & St. Paul Railway Company, Docket 17021, there was considerable discussion of the contracts of the company for electric power, and in
4976 its conclusions the Commission stated that in its judgment the management of the new company "should give careful consideration to these contracts with a view to the modification of such features as may be deemed unsatisfactory."

This subject was taken up with the power companies and, after extended discussion and negotiation, new contracts were executed effective July 31, 1929. The new contracts, particularly in the light of the falling-off in traffic in the past five years, have effected very substantial savings as follows:

For the five months August to December, 1929	$ 38,560.81
Year 1930	207,466.01
Year 1931	375,198.37
Year 1932	495,626.21
Year 1933	480,202.00
Year 1934	452,589.00
First six months of 1935	197,080.00
For the period from August, 1929, to June, 1935, inclusive, the savings have been	$2,246,722.40
which is at an average annual rate of	$379,727.64

I think that was a very valuable suggestion of the Commission—that we undertake to negotiate the new contracts.

Q. (By Mr. Swaine.) Mr. Scandrett, have you a
4977 copy of the plan with you?

Examiner Walsh: May I ask one question before that?

Mr. Swaine: Certainly.

Q. (By Examiner Walsh.) You spoke about reducing the number of operating divisions from 28 to 15. Did you increase the engine runs proportionately?

A. No; I would not think so.

Q. Not in anything like such proportion as that—I mean the main line?

A. Not in this period. We have not increased the engine runs in anything like that proportion. If you go back far enough—yes.

Mr. Swaine: I would like to go over the plan with you; I don't know whether you have copies before you or not.

Director Sweet: We have.

Q. (By Mr. Swaine.) Please turn to page 6.

A. Yes.

Q. First, the equipment obligations:

To remain undisturbed: General American Tank Car Corporation Equipment Trust Sub-Lease; and series N equipment-trust certificates.

Series N is one of the PWA trusts?

A. I can tell you what they all are, Mr. Swaine:

The General American Tank Car Corporation Equipment Trust Sub-Lease covers 500 double-deck stock 4978 cars of 40-ton capacity—the most modern equipment of that kind that we have.

The Series M equipment—

Q. (Interposing.) Let us get series N first.

A. Series N covers the two new streamlined locomotives there were built for this Hiawatha train which I advertised extensively yesterday. The locomotives cost us at the plant of the American Locomotive Company, $175,000.

Q. That is the most recent equipment obligation placed by the company, is it not?

A. Yes.

Q. And you concur in the statement I made in my opening statement that we could find no possible excuse for disturbing those obligations in any way?

A. We have to watch those locomotives so that they won't be stolen.

Q. Now, turning to the next group—$2,291,000, notes to the Federal Emergency Administration of Public Works; and $1,537,000, equipment-trust certificates, and as to which the obligations are not to be disturbed, either as to the lien or their maturity or interest, but as to which a request for

an extension of collateral is made, the collateral being a part of the first refunding bonds.

A. That first, the $2,291,000, is what we speak of
4979 as a rail loan; it covered rail and fastenings; $2,041,-
000; also air-conditioning equipment of $136,000; and Evans auto loaders, $114,000.

The notes are dated April 13 and May 18, 1934, with interest at four per cent beginning from and after one year from the date of the notes. $290,000 of the principal matures on January 1, 1937, and each year thereafter, to and including 1943, when the last payment is $261,000—on January 1, 1944.

Q. The only thing we are asking there is that the first and refunding bonds which are a part of the collateral shall be changed from short-term bonds into a long-term bonds, is it not?

A. Yes; the first and refunding bonds are the total collateral on the $2,291,000. That is 115 per cent of the par value of those bonds.

Q. Now, turning to the third group.

A. I should say, as to that series M, that is the new passenger equipment which I referred to yesterday which was built in our shops.

Q. The third group will remain undisturbed as to lien and interest but to be extended as to principal and changes to be made in the collateral pledged therefor. That, as the plan shows, is a Reconstruction Finance Corporation loan and a Railroad Credit Corporation loan.

4980 Now, referring for a moment to another arrangement with the Reconstruction Finance Corporation, because we will take it up later:

What is the basis of the proposed arrangement with the Railroad Credit Corporation?

A. The proposed arrangement with the Railroad Credit Corporation is for an extension of the maturity of the notes for ten years—that is, that is what the plan contemplates.

Q. And what change do we ask them to make in their collateral, and what change do we grant them? Well, specifically, at the present time they have the stock of The Milwaukee Land Company and an agreement with reference to the proceeds of the sale of the timber, do they not?

A. Yes.

Q. But they are bonded for the promissory notes of the land company to the railroad company, are they not?

A. That is correct; and we propose to pledge those notes

so that the Railroad Credit Corporation will get its money from the Milwaukee Land Company before the Milwaukee Railroad.

Q. The present legal and practical effect of the present situation is that they could not foreclose upon the land company.

4981 It is our purpose to give them collateral so that if there is an ultimate default, they can take it?

A. Yes.

Q. It is expected that that note will prove self-liquidating over the period for which we are asking the extension?

A. That timber of The Milwaukee Land Company at the present time, at present prices, which are very much depressed, probably has a value of $14,000,000. The price prevailing a few years ago, and which may prevail again, was in excess of $20,000,000.

Q. At the present time, in addition to that collateral, the Railroad Credit Corporation has a second lien on all of the Reconstruction Finance Corporation collateral, does it not?

A. That is correct.

Q. And the note expresses that lien to be upon all collateral now or hereafter given to the Reconstruction Finance Corporation?

A. Yes.

Q. We are also, by this plan, asking them to waive the right to have a second lien upon the future collateral of the Reconstruction Finance Corporation?

A. That is a very important point; they are getting a second lien on all of the additional collateral pledged

4982 with the Reconstruction Finance Corporation for the new loan.

Q. Coming to the next group:

To remain undisturbed as to lien and interest but to be extended in part as to principal:

Those are the publicly held equipment obligations aggregating $24,000,000, and you concur, do you not, in the conclusions reached in the studies submitted by Mr. Sparrow, that those equipment obligations are fully secured?

A. I don't think there is any question about it.

Q. The company could not afford to lose any of the equipment?

A. No, sir.

Q. It is the most modern equipment you have?

A. Yes, sir.

Q. On the other hand, you would like to be in a position on this proposed new set-up to meet the principal of those obligations as they mature over the next four or five years?

A. Well, possibly we could, but we would be in a much more comfortable position if we worked it out along the line of this plan—to postpone this security over a four-year period.

Q. The purpose of that is to spread the burden of
4983 the principal payments over a longer period than they now are, is it not?

A. That is correct.

Q. Turning to the next one:

To remain undisturbed as to lien and interest but to be extended as to principal, certain defaults to be waived, and the mortgages to be otherwise modified:

The first two are the Milwaukee & Northern first mortgage and consolidated mortgage bonds.

Do you agree with the conclusion that the properties are either earning their interest in full or earning it sufficiently nearly in full that with the traffic which they contribute for the other lines, the company is not justified in asking that any change in the character of the obligations, that is, that any lien to stock, or any change in the character of the interest, should be made?

A. I feel that it is fair to pay that interest in full, and I also feel that it is fair for the holders of those bonds to agree to an extension.

Q. Apart from its fairness, do you see any way by which those seven millions of bonds could be paid in cash?

A. I do not.

Q. All that they are being asked to do is to give a further extension for ten years; is that true?

A. That is correct.

4984 Q. Except for the approximately $250,000 bonds that have been mentioned several times—holders of both issues have already assented to several extensions, one of which runs to 1939?

A. That is correct.

Q. And it was felt that it was unwise and not either in the public interest or in the interest of the credit structure which it is hoped to be set up here, to have that earlier maturity?

A. That is correct.

Q. Now, the next issue involved in the heading are the

first and refunding bonds. Those are all either pledged as collateral or held in the company's treasury, are they not?

A. That is correct.

Q. And those bonds are the bonds which Mr. Sparrow described as being a first lien upon all the lines west of the Missouri River?

A. Yes, and some lines east.

Q. Yes; and having a value many, many times the amount of the small part of the issue that is outstanding?

A. The value of the properties as to which they are a first lien, I think, has been found by the Interstate Commerce Commission to be over $200,000.

Q. They are primarily held by Government bodies, 4985 are they not?

A. Entirely, except for the $900,000 we have in the treasury.

Q. And except for a second lien of the Railroad Credit Corporation?

A. Yes.

Q. And the only things that are being asked there are, first, an extension to January 1, 1958, of those bonds, and, secondly, the waivers and elimination of restrictive provisions in the mortgage itself—is that correct?

A. That is correct.

Q. Turning to the next group heading, No. (6):

To remain undisturbed as to lien and maturity of principal, but part of interest to become contingent, certain defaults to be waived, and the mortgage to be otherwise modified:

Those are the bonds in respect of which you have described the difference in opinion that originally existed between Mr. Jones, of the Reconstruction Finance Corporation, and the security holders, are they not?

A. Yes; I think that has been covered.

Q. That has been rather fully covered, and there, again, you are asking for waivers of defaults?

A. Yes, sir.

4986 Q. Turning to the next group, the 50-year five per cent bonds; and the Chicago, Milwaukee and Gary bonds:

Those are turned, by the plan, into cumulative income bonds, are they not?

A. Yes, sir.

Q. Now, what can you say as to the consideration of the possibility of turning them into stock?

A. Well, of course, from the standpoint of the management, if they were turned into stock it would be a very much more comfortable situation, but, as to the propriety of doing that, it seems to me that it is most questionable particularly as long as the present stockholders are left in the picture to any extent whatever.

Take the 50-year bonds—over half of them were issued at the time of the last reorganization, for cash.

Q. At par?

A. At par, which was paid up by the different stockholders in the way of an investment, and the balance was issued in exchange for other securities of the old company.

Q. Did we find in our discussion with the security holders any evidence of any willingness on their part to convert that position into a stock position?

A. If anyone indicated a willingness of that kind, I did not get it.

Q. Now, the interest is cumulative. Did we con-
4987 sider the question of making it non-cumulative?

A. We did.

Q. And what were the considerations affected as being left cumulative?

A. Well, of course, they were not cumulative. Again, it would make the position of the management more comfortable, but if it is cumulative, then the question arises as to whether that is fair treatment as between the 50-year gold bonds and the present adjustment bonds, as to which they have a priority. If not cumulative, to that extent they waived their priority, and there was a complete unwillingness on the part of the security holders to do it.

Q. Is it not true that if they remain non-cumulative the result would be that the interest for a year in which it is not earned would ultimately be received by the junior security holders if they were later transferred?

A. That is what I mean—as to the protection of its priority as compared with the adjustment bonds and with the stock.

Q. Now, in order not to have those—

Director Sweet (interposing). The general mortgage bonds have been issued in different series at different rates of interest, from 3½ per cent to five per cent?

The Witness: Yes.

4988 Q. (By Director Sweet.) Did your board of directors give consideration, Mr. Scandrett, to a reduction in the rate of interest for any of these series to a lower rate

in view of the fact that this general mortgage is a first lien on so much of perhaps the most valuable property?

A. There, again, Mr. Director, that would be quite helpful, if all of those bonds with a coupon of over 3½ per cent, say, were reduced to 2½ per cent, but we did not see any way we could do that.

Q. Well, of course, you could only do it for the part of the plan that was accepted and approved and recommended and affirmed finally by the court. Of course, all those things could happen.

Mr. Swaine. I think I can, perhaps, answer your question.

Q. (By Director Sweet.) Would that not be a desirable arrangement?

A. Of course, anything reducing the fixed charges is, from the standpoint of management, desirable. On the other hand, anything that affects the credit of the property adversely is a bad thing for the company. We don't quite see how you could do exact justice as between the holders of those different series, in other words, one man has but one series and one interest rate, and has paid a certain amount for it. Presumably, if the other was sold at the same
4989 time, with a smaller interest coupon, why, he could get it for a lower figure. Now, does your question contemplate putting them all on the same level?

Q. I was asking what consideration you had given to a reduction in the interest rates, especially on the issues that run over, say, four per cent.

Mr. Swaine: Mr. Director, that problem was presented by Mr. Jones' judgment, which was that the amount of fixed interest should be reduced on all these series to a flat dollar amount. My recollection is it was $3.

The Witness: That, however, was only for a 10-year period.

Mr. Swaine: I understand that, but it involved the same practical and legal question; we did take that up with the holders of general-mortgage bonds and they took the position Mr. Scandrett has outlined, and the prices paid for the bonds and certainly prices on the market reflected the different interest rates; therefore, it was not fair, as a practical proposition, and counsel for the board advised the board, first, that if an attempt was made to discriminate between the different series that way, reducing a five per cent bond to three per cent—a reduction of 40 per cent in

its interest rate—while leaving the 3½ per cent bond with three per cent, a reduction of only 16⅔ per cent, that
4990 difference of treatment would, as a matter of law, necessitate treating each one of that series as a separate class, because they were being given different treatment, counsel advised that in the opinion of counsel that kind of treatment could not be sustained in court as a fair and equitable treatment of the several classes; in other words, it would produce an arbitrary discrimination between security holders violative of their legal priorities, and, therefore, could not be sustained; and, therefore, Mr. Director, we had the two reasons:

First, the security holders themselves would not have it; and

Secondly, we felt that if it were attempted to be forced on them the effort would not be sustained. Does that answer your question, Mr. Director?

Director Sweet: It shows that consideration was given to it.

Mr. Swaine: It was considered both within the board and with the stockholders themselves.

Director Sweet. It seems advisable that some arrangement ought to be made which would do away with an interest rate as high as five or 4¾ or 4½ in connection with bonds of the character that these bonds are.

Mr. Swaine: There is no way to do it without giving
4991 them some compensation for it; if you give them any compensation for it, it means the issue of some additional principal amount of security.

The Witness: The only five per cent bonds are those that are pledged with the Reconstruction Finance Corporation; there are none outstanding.

Director Sweet: I know that there are $11,212,000 five per cent series G all pledged. The $15,000,000 of the series F 4¾ per cent bonds are outstanding.

The Witness: That is correct.

Director Sweet: And $34,000,000 of the series E 4½ bonds; $42,979 of the series C bonds; and that there are in all $8,950,000 of the series B at 3½; the first series—series A four per cent—$48,241,000—is that correct?

You don't know of any way in which it would be legally possible to provide, say, for a maximum interest rate on any of those bonds beyond four per cent?

Mr. Swaine: Only by giving the holders who were cut more than the other holders some form of compensation for

that additional cut, so that it could fairly be said by a court that there was no discrimination.

Director Sweet: Could that be done by the issuance of stock?

Mr. Swaine: I doubt it, because they have a lien
4992 today ahead of the 50-year five per cent bonds—the first and refunding bonds—and to attempt to give them a security which would be junior to an existing security would, it seems to me, not satisfy the requirements of section 77.

Director Sweet: Of course, that reduction of the interest rate would not in any way subordinate a lien that has been created.

Mr. Swaine: I think it does.

Director Sweet: By the payment of such principal and interest as will be stipulated to be paid.

Mr. Swaine: In that you discriminate between the two bonds—between the two series—I think that discrimination is unlawful and would not be permitted under section 77 and, therefore, unless you obtained unanimous consent of that series, the plan would be upset by the courts.

Director Sweet: Now, as to your 50-year five per cent bonds—those are all five per cent bonds?

Mr. Swaine: They are all five per cent bonds.

Director Sweet: Those bonds are not a first lien in any instance, but are a second lien, to a large extent?

Mr. Swaine: They are second to the small amount of personal revenues on all of the lines west and some of the branch lines east; they are a third lien on the branch
4993 lines.

Q. (By Director Sweet.) Mr. Scandrett, has any consideration been given to the possibility of the reduction of interest on those bonds?

A. There was consideration of that, but it was felt that if that were done, that, again, as Mr. Swaine, stated, you would have to have a consideration for it, and so it was felt it would be impracticable to do it.

Q. There is a pretty well recognized tendency at the present time for interest rates to decline; there might be some possibility of those securities participating in that?

A. Interest rates have declined, but they issued new obligations at a lower interest rate for cash. This debtor is hardly in a position to refund its five-percent obligations by the issue of three-percent obligations. In the case you put, the creditors are paid off by the reduction in the

process of the refunding. Unless they are paid off, it seems to me that they have a right—the holders of the 50-year bonds have a right to maintain their five-percent position ahead of other security holders; that the company has no right, and the securities junior to them have no right, to ask that they give up a part of that interest rate for the benefit of some security holders junior to them,
4994 and to the extent that we get in on it, it seems to us that we have the right to defer it or make it a contingent charge. If we don't have the right to propose a plan which asks them to surrender forever for the benefit of junior securities the right to get five percent out of the income, if the five percent is earned at some future time, that they have a right to take the property—the legal right to take the property away from the junior interests if, after a period of years, it develops that the bonds cannot earn that five percent.

The Witness: It all seems to go to the question of the priorities and the right to request the senior securities to give up anything, as long as the securities junior to them are left undisturbed.

Director Sweet: The securities junior to those are not left undisturbed; the adjustment mortgage bonds would be converted into stock; the stockholders are to take less stock, and preferred stockholders take common stock.

Of course, they are in a junior position and they have got to make sacrifices—I was wondering if it didn't appear to you, Mr. Scandrett, to be more desirable from the company's point of view, as a matter of reorganization, for the carrier, if it could, in this reorganization, to effect
4995 a substantial reduction in the fixed interest on the first and general mortgage bonds and on the 50-year five-percent bonds, rather than to do what is proposed; that is, in case of the general mortgage bonds, to make it contingent—in case of the 50-year bonds, to make it all contingent at the old rate.

The Witness: If that could be done legally, and if it was equitable to do so, I think it would be very desirable from the standpoint of the management.

Mr. Swaine: Our understanding of the 50-year bonds' position is that rather than to submit to that, they are willing to take the property, if they can take the property under the exising law.

Q. (By Director Sweet.) Mr. Scandrett, do you think it worth while—would you consent to giving that subject fur-

ther consideration in the event it will be necessary to have some further hearing in this case? Would you be willing to cover that point after further consideration?

A. Anything the Director says with regard to this hearing or any further hearing.

Mr. Swaine: I want to be clear just what we are being asked to do, because I think we have already done it, and we have a representative of the large holders here—Mr. Burgess can probably state better than we can their position.

Of course, as far as the company is concerned, they
4996 will be very happy to turn in those bonds for common stock.

Director Sweet: That was not suggested at all.

Mr. Swaine: I mean, I am taking an extreme illustration: I would be very happy, if it could be done lawfully, to see these income bonds in the form of preferred stock, which would make a better credit structure, but I don't see any way in which it can be lawfully done, and leave the interests down below in the picture.

Now, it can be lawfully done by permitting the 50-year five-percent bondholders to take the property and wipe out the adjustment bonds with the preferred stock—that is a way it can be done; you would have a fine credit structure, then, particularly if you turn a substantial part of the general mortgage bonds simply into preferred stock.

Mr. Scandrett has said that the officers and directors of the company, from their standpoint, would be very happy to have that kind of a financial structure, but we have considered all those questions; we considered them with the security holders, and we have given very thoughtful consideration to the legal problems involved, and we have come to the conclusion that so long as the junior security holders are left in the picture at all it is
4997 not either practicable or lawful to do the thing that has been suggested.

Director Sweet: Of course, I don't know how those various provisions of the plan impress anybody else, but I have gathered the impression that perhaps the most advantageous feature of what you are proposing is the plan to have a part of the interest on the general mortgage bonds and all of the interest on the 50-year 5s cumulative, the interest in the form of income payable only if earned—cumulative with a settlement but 10 years off—if that

feature could be eliminated it seems to me that the plan would be materially improved.

Mr. Swaine: I think, of course, it would be improved from the company's standpoint, and that was discussed.

Mr. Burgess: It might be the property of the land company.

Mr. Swaine: When I say "company" I mean the venture; I don't mean the stockholders. When I say "company" I mean from the standpoint of the operating venture, disregarding the rights of the human beings making up the venture.

All of that was given thought, and what you say is perfectly true; that is why I said at the outset that the charge of two reorganizations within ten years is a true charge; that would be true even under your sugges-
4998 tion, because how do we know they will earn the seven million? They might earn only four million.

We had an operating deficit in 1932. Unless we have some faith in the property we ought not to reorganize it at all, perhaps, but the answer that the holders of the 50-year five-percent bonds make to the suggestions is:

"We will take ten years to come back.

"We are willing to take ten years to see if the property will come back; to give to the adjustment mortgage bond holders and preferred and common stock and bond holders an opportunity to recover their old position.

"If, however, we are to be substantially disturbed in the process, we are not willing to give them a 10-year chance; we will take it now; we will take the property now."

My belief is that that is both a moral and legal position for them to take, and that was the belief of the board of directors.

Director Sweet: All right.

Q. (By Mr. Swaine.) The compensation which the 50-year bondholders are given for turning their interest into a charge on income is a conversion right, is it not?

A. That is correct.

Q. So that if there should be real prosperity or an inflation of any sort, they have a chance to participate
4999 through dropping down into the participating-stock position?

A. That is correct.

Q. Now, turning to the adjustment bonds:

At the opening I said there was a problem of how much

stock they should have. The plan provides that they get preferred stock at par for the principal and full cumulative interest; that is, 126 percent of the present principal amount.

Did we consider both in the board and with the security holders making that merely 100 percent of principal?

A. Yes, sir; we did.

Q. That was requested by Mr. Jones, of the Reconstruction Finance Corporation, was it not?

A. It was requested by Mr. Jones and, of course, it was felt by everybody that $182,000,000 of preferred stock would make a better picture than $230,000,000, but the holders of the adjustment bonds took the position that this accumulated interest of $47,000,000 had a priority right over the present preferred and common stockholders, and they were not willing to waive it.

Q. There, again, so far as the venture is concerned, it would clearly be a much better situation from the standpoint of the venture if all of that was common stock, would it not?

5000 A. Yes, sir.

Q. And it is a fact, is it not, that consideration was given to turning all of that into common stock?

A. That is correct.

Q. And the adjustment bond holders took the position that if they were to have their securities turned into common stock, everybody below them had to be completely forgotten?

A. That is correct; if they are to have common stock, they were to have it all.

Q. Of course, if they had it all, it is obviously true that they would not be interested in the number of units that would be divided; it makes no difference how you divide it into shares, if you have the whole 100 percent of the equity.

The present adjustment mortgage bonds are cumulative?

A. Yes, sir.

Q. This new stock is non-cumulative?

A. Yes.

Q. But what is given by way of compensation for sacrificing cumulative bonds?

A. It is a participating right. Any year after it receives $5, and the common stock receives 5 percent, under the declarations they are to divide it equally between

5001 the preferred and common stock; I mean, any right—

Q. (Interposing.) Equally per share?

A. Equally per share.

Q. Which is not equal in rate, because the preferred stock is $100.

A. $100 per share.

Q. And the common is $25?

A. Yes.

Q. Now, the preferred stock at the present time, as its name indicates, has a preferred position?

A. That is correct.

Q. The plan does violence to the qualitative preference—that is true in this new provision?

A. Yes; both the present preferred and common stock holders get the same amount of stock.

Q. And to offset that, we have made a quantitative provision as contrasted with a qualitative provision?

A. That is correct; the preferred stock holders get share for share, but with a reduced par value; the common stock holders get one third of a share for each share. There, again, nobody can say exactly what should be the relationship between the common and the preferred stocks. People have said to us that the relationship should be one to three or one to four, and, on the other hand, others thought it ought to be one to two.

5002 Q. Now, turning to the Terre Haute lease:

Do you concur in Mr. Sparrow's conclusion that the Terre Haute lease is a valuable asset of the company?

A. I think it is; I have no doubt of it.

Q. Was the possibility of reducing the rental in some manner considered?

A. Yes, it was considered, but we felt it could not be justified. It is true that we could cancel the lease, and that might prove quite hurtful to the holders of the Terre Haute bonds, but it would also be very hurtful to us, and I don't believe that the hurt to them would offset us for having hurt ourselves.

Q. Have you made a calculation of the relationship of the fixed charge under the plan to dollars of gross revenue and the showing of the reorganized company as compared with other of the class I railroads in that respect?

A. Such a study has been made; it was made by Mr. Fairman Dick; it shows that the reduction that the plan proposes in fixed interest rate is quite drastic, and, by comparing that debt with the debt of other railroads, based on the gross revenues per dollar of debt.

There are 34 class I railroads which, in 1934, had gross

revenues of $20,000,000 or more. Our 1934 gross revenue was equal to 39 cents per dollar of fixed-interest-bearing debt; that would be including full interest on
5003 the general mortgage and interest on the new loan of $12,000,000 from the Reconstruction Finance Corporation.

Q. When you say "full interest" that means you have taken it into consideration for 10 years?

A. That is correct.

Now, the only railroads of the 34 with a more favorable showing on that basis are the Norfolk & Western, the Chesapeake & Ohio, the Long Island, and the Santa Fe.

Our showing is less favorable than those four and, by the same token, is more favorable than the showing of the other 29 railroads.

Another comparison is to take the percentage of the Interstate Commerce Commission's valuation, which is required to pay all fixed charges. On the basis of full interest on the general mortgage bonds, the Milwaukee ranks third, with 1.5 percent of its valuation being required to pay fixed charges; the Norfolk & Western and the Santa Fe ranking first and second, respectively.

Q. Now, you heard Mr. Sparrow's testimony as to the method by which it was contemplated the reorganized company would finance its additions and betterments. Do you agree with the explanation which he gave on that?

A. Yes; I think we have discussed that. I am in
5004 accord with his opinion on it.

Q. You believe that it can reasonably be expected —at least, hoped—that within the next five years the figures which he had in his hypothetical application of the plan can be attained, say, that the $5,000,000 capital fund which comes before the 50-year-bond interest will be available?

A. Of course, it is anybody's guess and anybody's estimate. I would, in my opinion, if Mr. Sparrow has erred, say that it is on the side of conservatism. I think there is fully as good a chance, if not better, of the results for the next five years being better than is indicated in Mr. Sparrow's exhibit; there is as good a chance as that the figures will be too optimistic.

Q. And if those results are attained it would mean that during the five-year period the proposed loan from the Reconstruction Finance Corporation, and the right, in the latter part of the period, to use the $5,000,000 of earnings

next after the general mortgage interest, would be ample to take care of your contemplated additions and betterments?

A. Yes; without any difficulty.

Q. And if the additional earnings produced by the $135,000,000 of gross revenue were realized, then your first and refunding mortgage would again become a financial medium as it was expected to be as a result of the 1928 reorganization, in your opinion? Is that correct?

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A. That is correct.

Mr. Swaine: Now, unless the Director and the Commissioner have some questions, I don't think it is necessary to go over the details of the modifications of the mortgage bonds; I think we have explained the basis for perhaps all but one of those, which is practically self-explanatory; that is, that after the expiration of the voting trust, the reorganized company is to be allowed to issue first and refunding bonds only for 75 percent of certain additions and betterments. Of course, it defines the means of financing the 25 percent through the various cash resources that Mr. Sparrow pointed out, including a capital fund.

There is one other thing on page 12 that, perhaps, ought to be noted: 3(b) $25,000,000 of first and refunding mortgage bonds are to be made available for issue without compliance the present provisions of the first and refunding mortgage, and against the surplus created by the reduced capital.

Q. (By Mr. Swaine.) What is the purpose of creating those 25 millions of bonds?

A. Well, it is to make those bonds available out of the reduced capital, as you referred to—the capitalization under this plan is reduced to $162,000,000. I should assume that the first use we would have for those bonds would be to pledge part of them on such basis as the Interstate Commerce Commission and the Reconstruction Finance Corporation should fix for the new loan to be made by the Reconstruction Finance Corporation to us.

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Q. And any excess of bonds other than those so used as collateral, and the collateral bonds when they are returned, of course, would be issued only on such terms and conditions as the Interstate Commerce Commission might thereafter permit?

A. That is correct.

Q. And the purpose of this provision is to permit the taking-down of those bonds without the necessity of first

having made additions and betterments to the property equal to the principal amount of the bonds so to be issued; it would be expected that the Commission would make adequate safeguards in the interest of the public and in the interest of the investors in respect to the use of the proceeds.

Director Sweet: I would like to ask Mr. Scandrett if, in view of what you have referred to as the excess of the value of the property covered by the first and refunding mortgage bonds over the amount of bonds issued under that mortgage and proposed to be issued, and in view of
5007 this conservative provision you propose to put into the first and refunding mortgage, prohibiting the use of additional bonds in an amount exceeding 75 percent of the cost of additions and betterments, and so forth,—under those conditions and also in view of the reduction in the funded debt proposed here by the conversion of the adjustments into stock, you are satisfied that you should continue to agree to pay six-percent interest on bonds issued under the first and refunding mortgage?

The Witness: I would think there is nothing fixed about that; these bonds are simply issued at that rate and pledged as collateral; I certainly would hope that we could finance with less than six-percent money.

Director Sweet: If you did, it would require a modification of the first and refunding mortgage.

Mr. Swaine: No.

The Witness: No. Those bonds are available at any time at any rate not exceeding six percent, and any series can be surrendered and a new series carrying a lower rate issued and, of course, if the bonds now outstanding come back, and it were possible to issue them at a lower rate, they could be surrendered and the new lower-rated series issued.

Director Sweet: It requires no modification?

Mr. Swaine: It requires no modification of the
5008 mortgage; I think the other modifications outlined here are self-explanatory and that there is no testimony needed from the witness.

Q. (By Mr. Swaine:) Now, coming to the Reconstruction Finance Corporation, will you explain the arrangement there—the arrangement with the Reconstruction Finance Corporation?

A. Well, the arrangement with the Reconstruction Finance Corporation is that they will loan us from time to

time up to a maximum amount of $12,000,000—a 10-year loan at four-percent interest; it will also extend the present loans at the same rate of interest—four percent—for 10 years; they will also purchase equipment-trust notes representing 80 percent of the cost of new equipment up to $12,000,000; in other words, $15,000,000 of new equipment; they will advance $12,000,000 on it for the purchase of equipment trusts, likewise at four-percent interest.

Q. Now, those notes are to be secured by first and refunding bonds?

A. That is correct.

Q. There is not, at the moment, any agreement with the Reconstruction Finance Corporation about the rates that those bonds will pay?

A. No.

5009 Q. And there is a blank left in the plan for that purpose?

A. That is correct.

Q. And it is the suggestion of the company that the Commission fill that blank in before the plan be submitted?

A. For them to fill in at the same time we get the approval of the Reconstruction Finance Corporation.

Q. Turning now to the voting trust—

Q. (By Examiner Boyden, interposing.) Mr. Scandrett, before you leave that I want to ask you this:

Do you consider whether or not the treatment of the first and refunding bonds held by the Reconstruction Finance Corporation, leaving the interest rate at six percent, is equitably considering the treatment of the other creditors?

A. I don't regard as of any importance the fact that collateral pledged with the Reconstruction Finance Corporation are bonds that have a six-percent coupon; what we are paying the Reconstruction Finance Corporation is four percent. We are not paying them the interest on those bonds.

Q. Don't you consider that the rate of interest affects the value of the bonds?

A. Well, of course, the higher-coupon bond is worth more than a lower-coupon bond on the same property.

5010 Q. That is, the collateral held by the Reconstruction Finance Corporation for their loan?

A. Well, if you are looking to the question of our defaulting on our loan and their selling the collateral, that is something else.

Q. Well, going back to the original—

A. (Interposing.) You see, there is just one series of those first and refunding bonds and the coupon says "interest at six percent." It might have been five percent or four percent; they are pledged with Governmental agencies except $943,000 worth of them—most of them are pledged with the Reconstruction Finance Corporation and part of them with the Public Works Administration.

Q. Let us get back to the original question:

Do you consider that the extension of those bonds at six percent constitutes equitable treatment of those securities considered in the light of the treatment accorded in your plan to the other security holders?

A. I don't see that the interest rate on the securities that we pledged is of any particular moment one way or the other.

Q. (By Mr. Swaine.) Let us assume that those bonds are outstanding in the hands of the public; assume that for the purpose of the question:

5011 Is it not your opinion that to leave them undisturbed as to interest rate—their full six-percent interest is a fixed charge, as under this plan, is fair treatment to the general mortgage bonds senior to them on the lines east and which bondholders are asked to take a cut of one third?

A. Well, if there were first and refunding bonds outstanding in the hands of the public, I don't for a minute consider that they would be given more favorable treatment under this plan than the present general-mortgage bondholders, but they are not—no.

Q. That is the point I wanted to bring out. If any one of those bonds were outstanding in the hands of the public, any criticism that might be made would be on the ground that they are too well treated instead of badly treated.

A. I would not for a moment think that the owners of general-mortgage bonds, if those first and refunding bonds were outstanding in the hands of the public, would consent to take a cut in their interest while the first and refunding bondholders were left undisturbed, but, as I say, none of them are outstanding in the hands of the public.

Q. One of the reasons why the first and refunding mortgage was not sought to be disturbed, aside from the

5012 fact that they are all out now, it was hoped that they would become a financing medium?

A. That was the contemplation, of course.

Q. You wanted a fixed-interest bond to become a financial medium?

A. Yes.

Q. Now, as to the voting trust, you heard what Mr. Sparrow said—first, what was the purpose of that provision?

A. The purpose of that provision was to meet the views of the security holders, which was that inasmuch as we were unable to meet our obligations to them, that they ought to have a more or less controlling voice in the administration of the property.

Q. They requested it?

A. Yes.

Q. And the board of directors felt they were entitled to it?

A. We were entirely willing to accede to that request; that it was not unreasonable.

Q. The voting trustees—the persons who were suggested as voting trustees were selected by whom?

A. They were selected by this committee of security holders; we had nothing whatever to do with their selection, and I learned of their selection only about three or
5013 four days before we came down here, by letter from Mr. Walker.

Q. I show you a letter dated July 30, addressed to you by Mr. Walker, and ask you if that is the letter which first suggested to you and the company the names of those voting trustees?

A. Yes.

Mr. Swaine: Mr. Director, I offer that as debtor's exhibit No. 109.

Director Sweet: Who says that that is the conclusion of the committee?

Mr. Swaine: The letter states it is the conclusion of the committee; he signs it as chairman.

(EXHIBIT NO. 109, Witness Scandrett, marked for identification.)

The Witness: Your question is who described Mr. Walker—

Director Sweet: (Interposing.) Mr. Swaine, who are the members of the committee?

Mr. Swaine: I assume Mr. Burgess will state that; I am not fully familiar with the personnel of the committee.

We have met so many of the representatives that I don't

know which ones are on the committee and which ones are not.

5014 Q. (By Mr. Swaine.) Mr. Scandrett, your attention is called to the fact that the letter of Mr. Jones made the proposed participation of the Reconstruction Finance Corporation in this plan contingent upon the plan being consummated prior to December 31, 1935. What have you to say as to the desirability of expedition of the proceeding in the light of that provision?

A. Well, of course, that makes it desirable that we proceed without undue delay, but I want to refer to the fact that I have seen two printed letters addressed to the Commission by an organization that calls itself an independent committee for protection of Chicago, Milwaukee, St. Paul & Pacific Railway Company bondholders.

I am informed that those letters have been given to the press and have been printed in detail—in whole or in part—in a number of newspapers, and generally have been given very wide distribution.

In view of the charges that are made in those letters against the management of this company, I had expected that that committee would be represented at this hearing, but, so far as I am advised, they have not even entered an appearance.

I want to comment on the charge that they make that we have urged upon the Commission a course of undue

5015 haste in the consideration of this subject.

Based upon 25 years' experience with this Commission, I know that we could not accomplish that if we tried; but I want to say, with all the emphasis of which I am capable, that there is neither intent nor desire on our part to do so if we could.

Our duty and responsibility to the stockholders and the creditors of this great property are not lightly regarded by the management of the company; night and day that duty and responsibility are constantly with us. I know that it is not in the best interests of this property, nor would it be in similar property, to have a protracted proceeding in a bankruptcy court.

Commissioner Porter: May I just ask there, if you will pardon an interruption, Mr. Scandrett—

The Witness: Certainly.

Q. (By Commissioner Porter.) Will you people in charge of the actual operation of this property, and who

have been in charge of it for the last seven or eight years—what actual disadvantage is there if the Commission did proceed with due caution, believing that this matter should hang fire until we can make a reasonable prophesy as to the future, when the management in control of the property is the same as it has been?

A. Mr. Commissioner, the last thing that I want
5016 to do is to urge haste, and I am trying to make that just as plain as we can—that we are not urging undue haste, and we want this Commission to take all of the time it needs; we want everybody to have an opportunity to appear here for full discussion; we are not trying to foreclose discussion in any way.

Now, the difference between the property—

Q. (Interposing.) I was not insinuating that you were, but I was simply addressing to you a practical question that arose out of the statement that you made, Mr. Scandrett, as to the disadvantage of the property to remain in court, we will say, for some extended period of time.

Now, I wondered just where that disadvantage came in when the same people are left in charge of the property that have been in charge of it for the past seven or eight years; I was not insinuating anything one way or the other.

A. I think, Mr. Commissioner, it is very largely a question of morale—the effect of your people being in receivership or being in bankruptcy; in other words, it is just like a man who is heavily in debt, as contrasted with a man who is out of debt, there is a little difference in the way they walk down the street, and while the two men may be equally conscientious, the fellow who is out of debt is per-
5017 haps doing a little better work than the fellow who is bowed down with that debt.

Now, all I intended to say was—because I think it is not desirable that we drag through the courts for a period of years—we feel that it would be the thing to do to prepare, if possible, a plan of reorganization and file it with our petition in bankruptcy.

A great deal of thought and time and attention were devoted to the preparation of that position, and we were very greatly aided by the advice and counsel of Chairman Jones of the Reconstruction Finance Corporation and by the officers of insurance companies, trust companies, and savings banks which own over $100,000,000 worth of our securities.

I feel very strongly that if we had not prepared this plan as promptly as it was possible, that we would have been derelict in our duty. The plan is the best plan that we could devise with the limitations that confronted us; we make no claim of perfection for it. If anybody can suggest a better plan, we will welcome it, because we want the very best that we can get for this property.

There was no disposition on our part, as I have tried to say, to foreclose discussion or investigation; we hope that they will both be full and complete. All we ask is
5018 that the plan be given careful and full consideration without unnecessary delay.

Now, I believe, from evidence, based on a very long and pleasant experience with this Commission, that that is just what we will get at your hands—we will get full and careful consideration and, while it may not come out as quickly as we might like, that there will not be any unnecessary delay in it. I want to make that perfectly plain—that the charge that we are trying to get the Commission to act in undue haste has not anything whatever to support it.

Mr. Swaine: Mr. Director, that concludes the debtor's case; the debtor rests.

Director Sweet: The hearing will be in recess now until 1:30.

(Whereupon, at 12:30 p. m., a recess was taken until 1:30 p. m. of the same day.)

5019 **Afternoon session.**

(The hearing was resumed at 1:30 p. m.)

Mr. Swaine: Mr. Director, I find that there is one small matter that I failed to touch on before I concluded, and one matter as to which there was some apparent misunderstanding. If the Director pleases, I would like to reopen for those two matters.

Director Sweet: All right.

H. A. SCANDRETT testified further as follows:

Further Direct Examination.

Q. (By Mr. Swaine.) Mr. Scandrett, what are the duties of the voting trustees under the plan, briefly summarized?

A. Well, of course, they will have no duties until the plan is adopted and approved by the Commission and the court.

I would conceive that their primary duty thereafter would be the choice of the men who will serve on the board of directors of the company; that would be an annual duty. I think also that they would undoubtedly keep in rather close touch with the activities of the railroad company and its progress and also with the performance of the men who were placed on the board of directors.

5020 If they thought that changes should be made in the board, why, of course, each year they would have an opportunity to do that.

Q. What is the mandate under the plan as to the representative character of that board?

A. The mandate of the plan is that while there is unpaid interest the board must consist of representatives of the different mortgage interests.

Q. Is it at least a majority of the board?

A. At least a majority of the board will be representative of the general mortgage and the—

Q. (Interposing.) The 50-year fives?

A. The 50-years fives and the Gary.

It also provides that at the time that there are any new borrowings from the Reconstruction Finance Corporation, that that corporation shall have the right to name one member of the board.

Q. Now, is there a second duty that they have in connection with carrying out the plan?

A. Well, they are to approve the forms and the methods of carrying out the plan.

Q. With their counsel?

A. Yes.

Q. There might have been some colloquy or misunderstanding between the Director, yourself, and myself,

5021 this morning, about the desirability of stock capitalization. It was not intended, either by yourself or, if you know, by myself, representing the company, in any way to indicate the belief that any part of the securities here provided to be in the form of bonds should be turned into a form of stock?

A. No, Mr. Swaine; so far as I was concerned, I think —and so far as you were concerned—I think we were just considering the question from the standpoint of the kind

of a capital set-up which would be most desirable for a railroad corporation or otherwise to have; that with a corporation, as with an individual, debt that can be avoided is undesirable.

We are not in a situation, though, where we can determine that question; we are not in a situation where we can provide an ideal set-up. We do owe a great deal of money, and we have obligations to the people that have loaned us that money. I do not think it would be right and I do not think it would be equitable and, in the long run, I doubt very much if it would be the provident thing if we had it within our power to wipe out all the debts, and undertake, in some way, to preserve priorities, although it is not clear to me how that can be done by converting all of that debt into stock; certainly if we advocated a plan of that
5022 sort it could not but have a very bad effect ultimately on the credit situation and, with that kind of a background, and with that kind of a history, it will become desirable for us to borrow money, and I don't know where we could go to get it; we certainly could not get it from those fiduciary institutions.

Furthermore, in the case of those fiduciary institutions, as I understand it, many of them are not allowed to own stock, and that would make it inequitable, to force stock upon them, but I feel that any program of that kind would not be a fair program, and I think, on that broad ground is the ground on which I would like to place it.

Mr. Hoffman: May I ask a few questions, Mr. Director?

Director Sweet: Just a minute, please.

Have you some questions, Mr. Boyden?

Examiner Boyden: Yes, sir.

Q. (By Examiner Boyden.) Mr. Scandrett, can you give us a comprehensive statement of the traffic of the Milwaukee; that is, the principal commodities carried and how they are moved on your line, and their source?

A. Of course, we file currently with the Interstate Commerce Commission the commodity statistics showing just what we handle of every commodity.

Q. As part of your annual report?

5023 A. I think it is a separate report, is it not, Mr. Sparrow—a special report?

Mr. Sparrow: Yes, I think it is.

The Witness: There is also a statement of that nature in the annual report. The accounting officers advise that

the company files such reports quarterly with the Commission; we will be very glad to have it stipulated that a quarterly report was filed since this corporation came in and that it shall be treated as a part of the record in this proceeding.

We will supply a duplicate so that can be actually physically put into the record.

Q. (By Examiner Boyden.) Does that report show the sources of the traffic?

A I think not; you mean as to where it originates—on what lines?

Q. Yes. Can you give us information now as to that, Mr. Scandrett?

A. Well, I can probably tell you where a good deal of the traffic originates, but I could not give you any specific information.

Q. Well, in a general way.

A. Well, speaking generally, of course, in the large cities and some of the smaller cities we originate and handle a large volume of manufactured commodities and there is also a large less-than-carload movement. In prac-
5024 tically all of our country territory we handle agricultural commodities. We originate lumber in Wisconsin and Michigan, but the great bulk of our lumber is originated on the western end of our line in Idaho and in Washington.

We originate our traffic which we handle through the port of Escanaba, Michigan.

In agricultural products I would include livestock handled from almost all of our country territory.

Q. Where does the lumber traffic—

A. (Interposing.) The great volume of our coal has its origin on the line of the Chicago, Terre Haute & Southeastern; we serve coal mines also in Commissioner Porter's State of Iowa.

We have, through our subsidiary, also, our own coal-mining operations at Roundup, Montana, which supplies the coal for the territory west of there until you get into the electrified zone, and for 200 miles east of Roundup.

Q. How does the lumber which originates in the western part of the State of Washington move?

A. The great bulk of that that originates at mills on the ocean moves, I am sorry to say, of late years, through the Panama Canal. There is a very substantial volume, how-

ever, from interior mills in the State of Washington,
5025 some located within a short distance from tidewater,
that moves via rail lines, and the great bulk of the lumber from Idaho is an all-rail movement. Now, even from mills on tidewater we handle a considerable volume of traffic to the territory Chicago and west. The best market for our lumber is in the farming territory, and that is west of Chicago. That market, for the last three or four years, has not been what it was in the past, because of the difficulties which have confronted the farmers, and there is a very large store-up demand for lumber in the farming territory. With the somewhat-improved condition of agriculture in the past few months, the lumber is already moving in larger volume. Our lumber movement at the present time is running about 35 percent, which is ahead of a year ago.

Q. Would you say that the bulk of the lumber which you transport moves to points on your line and moves off of your line?

A. Well, I would say that the greater volume moves to territory on our own line, but there is a considerable volume of lumber that goes to our connections. There is quite a considerable volume that goes to Central Freight Association territory which we interchange either at Chicago
or through the junctions of the Terre Haute. We
5026 exchange that through junctions on the Terre Haute
and wherever we are able to control the routing because of the larger division we get in that way—in other words, we participate on the Terre Haute line in the divisions accruing to the lines east of Chicago.

Q. Do you move—

A. (Interposing.) We also receive lumber that originates on other lines and is handled to destinations on our line, but not in as large volume.

Q. Do you move any lumber from the coast mills—the Pacific-coast mills?

A. Oh, yes; we have a very good business; I gave you some figures as to the net results on our operations at Longview, Washington, which is on tidewater; it is on the Columbia River and the ocean boats go right up to Longview. We serve Gray's Harbor and Willapa Harbor; we move lumber from there. We also move lumber from Everett, Washington, which is on Puget Sound; also from Tacoma—Tacoma is a large lumber-manufacturing point.

Q. Petroleum and petroleum products constitute an important commodity on your line?

A. Petroleum and petroleum products traffic is holding up better than any other traffic on our line during this period of depression.

Q. What is the source of that traffic?

5027 A. Well, the great bulk of the traffic which we handle is in what is known as the midcontinent field, which comes to our line at Kansas City.

Q. Where does that move?

A. There are also refineries, as you know, in the Chicago district, and we handle a very large traffic from that territory.

Q. Where does the oil come from that is refined in the Chicago district?

A. That comes from pipeline from the midcontinent field; also from the Wyoming fields.

Mr. Swaine: The 1934 report—maybe as you know—indicates that petroleum oil, refined oil, and all other gasoline constitutes 16.2 percent of the total carload tonnage in 1934, and 7.1 percent in 1933.

Q. (By Examiner Boyden.) Now, the oil that you receive at Kansas City is largely destined to points on your line, or is a great deal of it for other destinations on other lines?

A. Most of it would be to destinations on our line—the bulk of it.

Q. Do you get it from other carriers at Kansas City?

A. Yes, sir; there also is a refinery just out of Kansas City—Wood River.

Q. (By Director Sweet.) On your line?

5028 A. Not on our line; we have access to it through a switching rate.

Q. (By Examiner Boyden.) What are the principal coal movements, Mr. Scandrett, on your line?

A. Well, aside from our company coal, we move the coal from Indiana rather generally through points on our line in Illinois and other points in Indiana and Iowa; some of it goes up as far as Minnesota and to Wisconsin. The Iowa coal is generally consumed in rather nearby territory. There is coal from Montana—I refer to our own coal-mining operation at Roundup.

There is a commercial operation at Roundup and another one at a point near Roundup.

Q. (By Director Sweet.) Carpenter Creek?

A. Yes; Carpenter Creek; that coal, I would say—the bulk of it—has its destination in Montana, but it does get into Idaho and eastern Washington and also into the Dakotas. We have lignite mines on our line—on that Wabasha line, which is one of the lines, Mr. Director, that was in your list.

At times we have had quite a substantial movement of that coal.

Q. Have you any lignite mines on your main line?

A. No; but there is a world of lignite accessible to our line. As you know, the character of that coal leaves
5029 something to be desired.

Q. (By Examiner Boyden.) Have you experienced truck competition to any material extent in the movement of coal?

A. No; there is some movement from what they call wagon mines, which are not much more than holes in the ground, but we have not had an acute situation with reference to truck movement of coal such as has been confronted by some of the eastern lines.

Q. You have experienced truck competition in other commodities, however?

A. Yes.

Q. What commodities?

A. Well, there is an increasing list, or has been for some time, an increasing list of the number of commodities that are susceptible to truck competition. Practically all of the less-than-carload traffic is susceptible to truck competition —butter, eggs, cheese, live poultry, and so forth, moves in considerable volume.

Q. (By Commissioner Porter.) Also livestock—that is 67 percent of it?

A. That is different, Mr. Commissioner, at different markets. Now, at Sioux City, Iowa, your statement is substantially true so far as hogs are concerned; the hog traffic ordinarily is relatively short-haul traffic as compared
5030 with the haul on sheep and on cattle. At Omaha the truck competition is severe, but not as severe as at Sioux City, and at Chicago there is a still smaller volume of livestock traffic moved by truck than at Sioux City or at Omaha.

Then, of course, there are the interior packers in Iowa and Minnesota, and truck competition is very strong. We

are experimenting with the free pick-up of livestock in limited territories and, while the experiment has not progressed far enough to give you a final and definite opinion, I am inclined to the view that we can recover a substantial amount of that traffic. Under this arrangement, we would either arrange to pick up the live stock at the farm; within a certain distance of the railroad station, or, in the event the farmer makes the delivery, we make him an allowance.

Director Sweet: Any cross-examination?

Cross-Examination.

Q. (By Mr. Hoffman.) Mr. Scandrett, the general mortgage bonds of The Milwaukee Road are issued in six separate series—is that correct?

A. I think that is correct.

Q. And all of those series are issued under one indenture?

A. Yes.

5031 Q. And the only difference between the various series is the difference in interest rate?

A. Yes; they were issued at different times and the interest rate was controlled by the market conditions for the bond at the time of its issuance.

Q. But other than the different interest rate, such as you say was controlled by the market conditions, the rights of each and every holder of each and every series of those general mortgage bonds are identical with the rights of each and every other holder?

A. I am not practicing law, Mr. Hoffman; I did at one time; but that is my understanding.

Q. Substantially that must be correct—the mortgage is due—all series are due on the one date?

A. Yes.

Q. And the security is the same?

A. Yes.

Q. Now, your testimony this morning with respect to the general mortgage bonds, you testified as to conferences with insurance companies and other holders of those bonds?

A. I did not confine that to conferences with holders of the general mortgage bonds.

Q. I understand, but, for the moment, I am confining

my question to those conferences so far as they relate
5032 to the general mortgage bonds. I don't mean to indicate that your testimony was so confined. Did you hear Mr. Swaine's colloquy with the Commission with respect to the legal, moral, and fair position of those bonds having regard for the different interest rates that were payable on those bonds?

A. Yes.

Q. And did you hear his statement to the effect that to treat bonds offering one interest rate exactly the same as bonds offering another rate, would be both illegal and unfair?

A. I heard everything Mr. Swaine said this morning.

Q. Is that a substantially accurate repetition of his statement?

A. I don't recall; I would rather let the record speak for that.

Q. Do you subscribe to his statements?

A. I told you I am not practicing law.

Q. Do you, as an official of the road, subscribe to them?

A. I still answer that I am not practicing law; you are asking me as to the legal effect of it. I know that when we had our conference—when I had one of my earlier discussions with Chairman Jones of the Reconstruction Finance Corporation, one suggestion that was discussed
5033 between him and me was not paying a certain percentage of the interest on the general-mortgage bonds with a fixed charge, but a certain amount, say, $3, the effect of which would have been that the holder of the 3½ percent bonds would have had, as an interest charge, all but one half of one percent of his interest, and those with the higher coupons a smaller proportion. Now, we were very definitely advised by Mr. Swaine that that was not a legal thing to do.

Q. And the board acted on that legal advice so given by Mr. Swaine in the preparation of this plan?

A. I don't know that that would have been done, or that that would have been the action of the board, even if it had been legal in the opinion of counsel.

Q. And did you further hear Mr. Swaine's statement that in order to take any rights away from holders of bonds, or in order to disturb their interest, some adequate compensation must be made for the taking away of those rights?

A. I think that is what he said. I do not see that it is very profitable for you and I to be discussing what Mr. Swaine has said or what I thought he has said, so, to the extent that any issue waived in any way its priority that it was entitled to quit pro quo—

Q. (Interposing). And it followed naturally that
5034 there was a priority of some sort between the varying interest rates on this one issue of bonds?

A. I don't understand that he was talking about that at all.

Q. Now, referring to the treatment of the Milwaukee & Northern bonds under the plan as proposed by you, there is a difference in rights not only of the unassented bonds, but also of the assented bonds, is there not?

A. I don't know; I know that evidently 98 percent—I would say that evidently holders of 95 percent of those bonds regarded what we propose as a fair disposition of the matter in 1934, in view of the situation with which we were confronted. Now, as to whether or not the remaining three percent is in a different class from those that assented, legally speaking, I don't know.

Q. You are referring now to the first-mortgage bonds?

A. I am referring to the first and the consolidated bonds.

Q. Are you not slightly in error as to the percentage?

A. I might be, one or two percent; I think it is 98 percent of one kind and 94 percent of the other; that is my recollection.

Q. The plan proposed to treat in identically the same way the holders of the assented bonds and the holders of the non-assenting bonds?

5035 A. Yes.

Q. Irrespective of the fact that the holders of the non-assenting bonds lay claim to have legal rights not attaching to the assenting bonds?

A. The plan proposes the same treatment for all.

Q. The holders of the non-assenting bonds received the same consideration as the assenting bonds, did they not?

A. Yes.

Q. That consideration is set forth in a letter dated March 14, 1934, signed by you, is it not?

A. Yes; the same thing was open to the non-assenting bondholders.

Q. Yes.

A. They did not accept.

Q. They did not accept. That consideration was $50 per bond, was it not?

A. Yes.

Q. In the letter to which I have referred the statement was made that this cash payment is unfair and is equivalent to placing the new interest at 5.66 per cent; is that correct?

A. Yes; it really worked out 5½ percent; in other words, five years for $50 on a $1,000 bond, but, inasmuch as it was paid in advance, the interest worked out on the basis of 5.66 percent.

5036 Q. Even though you are not practicing law, I assume you have not lost your entire legal knowledge.

A. Most of it, I think.

Q. What consideration is given, or paid, or accorded under the new plan as promulgated to the holders of the non-assenting bonds in consideration of taking away from them their right to enforce payment at the maturity of their bonds?

A. Well, you mean what program do we propose to pay them because they would not go along with the 96 percent?

Q. No; based on Mr. Swaine's statement that rights and priorities could not be taken away without compensation—I want to know what consideration or compensation is accorded to the assenting bonds for taking away their rights and priorities under this plan?

A. Well, there is no use quibbling about it; we get back to the same thing—that the plan proposes the same treatment for the assenting and the non-assenting bondholders.

Q. In other words, nothing?

A. I say the same treatment.

Q. Now, you have testified to the fairness of this plan, in your opinion?

A. Yes.

Q. Do you believe it fair and equitable to refuse
5037 to take away the rights of the holders of general-mortgage bonds unless you compensate them, and at the same time take away the rights of holders of underlying bonds, or some of them, who have not assented to the plan promulgated by you?

A. We have no similar situation in the case of general mortgage bonds.

Mr. Swaine: I would like to point out that we compensate them for the extension by paying interest during the period of the extension.

Mr. Hoffman: That is no compensation, Mr. Swaine.

Mr. Swaine: It usually is so regarded.

Q. (By Mr. Hoffman.) Are the general mortgage bonds a lien on the Milwaukee & Northern properties?

A. If they are, they are subject to the Milwaukee & Northern—I don't know about that; you have that in your mortgage map.

Mr. Hoffman: I was not furnished with a copy of the mortgage map.

Mr. Swaine: They are not. I understood you to inquire as to whether or not the Milwaukee & Northern bonds are in the general mortgage.

Mr. Hoffman: Yes.

Mr. Swaine: They are not.

Q. (By Mr. Hoffman.) Mr. Scandrett, did you
5038 have any part in the preparation of the 1925 plan of reorganization of the old Milwaukee Road?

A. No.

Q. Did you at any time have occasion to study the old plan?

A. Well, when I came over to the Milwaukee Road, which was after that plan had been consummated, I tried to familiarize myself in every way I could with the property, and I read the decisions of the Commission in the reorganization proceedings and on the investigation which the Commission had conducted; I read the Coverdale & Colpitts report made to the board of directors prior to the receivership.

Q. Then you read the plan itself?

A. Yes, I read the plan.

Q. And was it your conclusion at that time, from a reading of the plan itself, that the Milwaukee and Northern bonds had been assumed by the new company—the present Milwaukee Company?

Mr. Swaine: Mr. Examiner, I object—

Mr. Hoffman (interposing): Let him answer it.

The Witness: Let me answer it.

I don't have any opinion on that at all.

Mr. Swaine: I object to this line of examination because I conceded, for the purpose of this proceeding,
5039 that the Commission could treat those bonds exactly as if they had been assumed; they are treated identically with the assumed bonds in the plan.

Mr. Hoffman: Because Mr. Swaine concedes something that means nothing, I don't want a concession he made in

error; I don't want a concession that he proposed to treat us the same as somebody else; I want a concession that we are entitled to similar treatment.

Q. (By Examiner Walsh.) Do those non-assenting bonds have coupons for interest?

Mr. Hoffman: The plan provided, Mr. Walsh, for coupon interest to be collected on those bonds without subjecting the bonds to the assent. I don't know whether those non-assenting bonds collected interest or not; I believe they collected the interest due on June 1, 1934.

Examiner Walsh: Have they collected any since?

Mr. Hoffman: I believe not, although I won't make the definite statement.

Mr. Swaine: I think that is right, because there is no way for them to get interest, because the assenting bondholders came in and got new bonds; those bonds have never been brought in for the annexation of the new coupons.

Examiner Walsh: They are registered?

Mr. Hoffman: They are preferred bonds; they are
5040 no longer coupon bonds, the last coupon having been detached.

Q. (By Mr. Hoffman.) In the preparation of your 1928 report you had before you, at one time or another, the plan of reorganization of 1925? Is that correct?

A. I don't think so, in the preparation of the report.

Q. You had seen the plan of reorganization, had you not?

A. I have already said I had seen it.

Q. That 1928 report bears the statement, on page 17, that it was submitted by order of the board of directors. That is a fact, of course, is it not?

A. Yes.

Mr. Swaine: Mr. Director, I would like to express an objection. We said that the bonds will be treated in this reorganization as if the representation in that report of an unseen error was true; that is, exactly as if they had been assumed.

Mr. Hoffman: That is the very point; we do not concede the "unseen error" part of it; we want to show to the Commission that it was a deliberate intent to assume it at that time. There was no unseen error at all.

The Witness: I can perhaps cut it short for you; there certainly was no deliberate intent on my part.

Q. (By Mr. Hoffman.) Not on your part?

A. I mean as an officer of the company.

5041 Q. There was a deliberate intent on the part of the railroad company?

A. Not so far as I know.

Q. The board consisted of Mr. Mortimer N. Buckner, who was president, or chairman of the board, at that time, of the New York Trust Company, and experienced in reorganization matters—I mean, he was one of the members of the board—I am reading from the report.

A. Yes.

Q. The board also consisted of Mr. Harry E. Byram, who had been a previous president of the road and, I believe, one of the receivers?

A. That is correct.

Q. Mr. Walter P. Chrysler, of the Chrysler Automobile Company?

A. Yes.

Q. And the next director is Walter W. Colpitts, of the firm of Coverdale & Colpitts, who are experienced engineers in connection with railroad matters—is that correct?

A. I think they have had a very general engineering experience.

Q. Possibly the best of our engineering firms in the country so far as railroads are concerned.

A. I think perhaps they have done more work.

5042 Q. They have operated, on one behalf or another, in connection with reorganizations?

A. They have a very fine reputation.

Q. The next member was Mr. Frederick H. Ecker; I don't know whether he was then president or treasurer of the Metropolitan Life Insurance Company, but, in any event, he was a ranking officer?

A. He was at that time vice president of the Metropolitan Life Insurance Company.

Q. The next member was Samuel H. Fisher. What was his business?

A. Mr. Fisher is a lawyer. He is something in my situation—not practicing very much.

Q. But he was a lawyer?

A. Yes.

Q. Mr. Donald G. Geddes was a banker?

A. He was in the investment business, I think.

Q. Familiar with and dealing in bonds and securities and familiar with the values thereof?

A. I presume so.

Q. The next one was Mr. Mark W. Potter, who, I be-

lieve, had been a member of the Interstate Commerce Commission, and one of the receivers of the old road—a distinguished lawyer.

A. I think so.

5043 Q. And still a distinguished lawyer?

A. He was a Commissioner.

Q. The next is George E. Roosevelt, who had acted as chairman of one of the committees representing the old St. Paul bonds.

A. That is correct.

Q. The next one was Mr. H. A. Scandrett, who was many years a lawyer, and became president of the reorganized company?

A. That is correct.

Q. Mr. Sparrow, who testified here, is very familiar, apparently, with the rights and priorities of all of the mortgages of the road—is that correct?

A. That is correct.

Q. And the next one is Mr. Robert T. Swaine, a distinguished New York lawyer, and counsel for the debtor company here? Is that correct?

A. That is correct.

Q. Who was Mr. Van Dyke? President of the Northwestern Mutual Life Insurance Company?

A. He was at that time.

Q. Those men constituted the board, by order of which this first annual report was made?

A. Yes.

Q. Now, in addition to the board upon which ap-

5044 peared four lawyers, some of them distinguished and some of them claiming not to be distinguished, the board had counsel? Is that correct?

A. That is correct.

Q. And of whom did that counsel consist?

A. It consisted of Mr. Swaine and two of his partners: Mr. F. H. Wood and Mr. D. C. Swatland.

Q. And what were the duties of the counsel for the board of directors?

A. To advise with the board and to answer questions in regard to legal matters which might arise.

Mr. Swaine: I concede it was my duty to look over that report, and I will also say I did look over it.

Mr. Hoffman: If you don't mind, Mr. Swaine—

Mr. Swaine: (Interposing.) I make that concession.

Mr. Hoffman: I would rather not have the concession; I prefer to develop it from Mr. Scandrett.

Mr. Swaine: All right.

Q. (By Mr. Hoffman.) What were the duties of the counsel for the board as distinguished from the duties of counsel for the company?

A. Well, they were primarily, in a way, the counsel to whom the board looked for advice and counsel.

Q. And what advice and counsel could the board require that was different from the advice and counsel that
5045 the company required as such; their interests were not antagonistic in any way, were they?

A. I think—I don't understand your question.

Q. The interests of the board and the interests of the company, as such, were not antagonistic to each other in any way, were they?

A. The board was the board of directors of the company.

Q. That is right, and therefore the interests of the board were or should have been the interests of the company itself.

A. I think you might leave out the "should have been".

Q. I am willing to accept the amendment. They were?

A. Yes.

Q. Is there any other railroad company that has counsel for the board of directors as distinguished from counsel for the company—the general counsel and general solicitors, as far as you know?

A. I don't know.

Q. The Milwaukee, as far as you know, is unique in that respect?

A. I don't know whether it is unique or not; I never had any occasion to look into the situation.

Mr. Swaine: My duties as counsel for the board in this case are exactly the same as my duties as general
5046 counsel of the Frisco; Mr. Field had been with the company for many years and had the title of general counsel; Mr. Dynes, who succeeded him, has been for very many years general solicitor; it is purely the matter of a giving of a title; and the by-laws prescribe the duties in connection with that title. I think practically every company of importance has counsel who has the same duties toward that company that I have toward the St. Paul; he might not have that specific title; he has it under some title.

Q. (By Mr. Hoffman.) As a matter of fact, this report was submitted to the board of directors before it was submitted to the stockholders—is that correct?

A. Well, my practice, I think, all the time I have been with the property, was that when we get a report in shape—and, of course, you understand that a great many different officers make contributions to that report—that in advance of the meeting at which the report is to be considered by the board, copies are sent, a week or so in advance, to the members of the board, and request is made of them to advise me if they have any criticism or suggestion as to additions or changes.

Q. And the report, as finally submitted, includes those adopted criticisms or changes of the various members of the board?

5047 A. Yes.

Q. So, when the statement is made on page 7 of this 1928 annual report, that "In connection with the acquisition of the property of Chicago, Milwaukee and St. Paul Railway Company the company assumed $154,479,000, principal amount, of the funded debt outstanding, secured by mortgages on properties acquired by the company and by equipment trusts, and issued $106,395,096, principal amount, of its own 50-year five-percent mortgage gold bonds, series A, and $182,873,693, principal amount, of its own five-percent convertible adjustment mortgage gold bonds, series A" that statement was advisedly made at that time?

A. Well, I would doubt very much whether or not any member of the board gave that anything more than the most cursory consideration, and perhaps did not read it at all. There is a great volume of information that is put in merely as information and, as I say, I don't know any more than you do whether each individual member of the board—I can speak for myself, and it never came to my attention; I never gave that particular statement any particular consideration.

Q. I call your attention to the copy of the 1925 plan of reorganization which has been marked in evidence here as exhibit No. 69, and call your attention on page 9

5048 thereof to the words "present capitalization" and underneath it "obligations to remain undisturbed", and ask you whether or not, at or before the promulgation of the 1928 report of your company, you had seen that plan of reorganization with those words.

A. I had seen this plan of reorganization, but whether or not I had ever considered that particular feature, I don't know—probably not.

Q. Probably not?

A. No.

Q. You would not be in a position to give us now your then definition of the word "undisturbed"?

A. No.

Q. Can you give us your present definition of the word "undisturbed" as relating to securities?

A. I don't know that I can define "undisturbed"; it seems to be that it defines itself.

Q. You are a man of considerable experience—much more than I am—will you do your best and give us your present definition of "undisturbed"?

A. I think that "undisturbed" means not disturbed; I don't know that I would add anything more than that. I would just take the word as it is.

Q. Now, the old Milwaukee Road had assumed, by direct agreement, the payment of the principal and
5049 interest on the Milwaukee & Northern bonds.

A. I understand that is correct.

Q. And the reorganized company took away from the old Milwaukee & Northern bondholders their direct pledgor on the bonds, did it not?

A. I don't know whether it did or not; that is another question of law, I suppose; as to whether or not there is still a Chicago, Milwaukee & St. Paul Railroad after the reorganization.

Q. The properties had been transferred, pursuant to the plan, to the railroad company—the new St. Paul? Is that correct?

A. That is as I understand it.

Q. And when the properties were transferred and the reorganization plan was consummated, were the Milwaukee & Northern bondholders left with or without a pledgor on their bonds?

A. That is the same question. I don't know whether any rights they had as against the old Chicago, Milwaukee & St. Paul Railroad existed or not.

Q. Well, they had the agreement of the old Chicago, Milwaukee & St. Paul Railroad Company to pay principal and interest, did they not?

A. Yes.

Q. That agreement was made in 1913?

5050 A. I believe so.

Q. At the last maturity of those bonds?

A. Yes.

Q. In substance, the agreement was made in consideration of and through the Milwaukee & Northern of retaining that company's revenue of the road—that is right, is it not?

A. I don't know about that agreement; that all happened years and years before I had any connection with the property.

I would like to go along with you and answer every question just the way you want it, but it is perfectly silly to be asking me about the terms of those agreements that were made 20, 30, and 40 years ago, and which have never come to my attention, and which I have never had occasion to study.

Q. You never saw them?

A. No.

Q. Not at any time?

A. Not at any time.

Q. What is your understanding of the words "the capitalization of the new system"?

A. My understanding is that that is the amount of the stocks and debt of the company.

Q. Was that your understanding in 1928—when 5051 the 1928 report was issued?

A. I think so.

Q. That is also your present understanding?

A. Yes.

Examiner Walsh: So that I may understand this a little better—

The Witness: Yes.

Examiner Walsh: Will you tell me what substantial difference it makes to you that the new company, in the financial difficulties of the Milwaukee, whether that company assumed your bonds or not?

Mr. Hoffman: The difference it makes to us is this, Mr. Walsh:

We maintain that we are a separate class of creditors entitled to separate recognition; we are actually and really entitled to payment of our bonds in this reorganization, as distinguished from the assenting bonds, and if this company has, as we claim, assumed the payment of those bonds, and if we are correct in our contention, we are in a separate class; the plan cannot go through without our consent, and as we are more than one-third of that class, the plan cannot go through unless we are paid.

Director Sweet: Where does the court order classify the creditors?

5052 Mr. Hoffman: The classification was made without notice.

Director Sweet: I ask you, where does it place you?

Mr. Hoffman: It places the assenting and non-assenting bondholders in one class.

Director Sweet: Do you expect the Commission to modify the court order?

Mr. Hoffman: We have made an application, which has been set down.

Director Sweet: You don't expect the Commission to modify the court's order, do you?

Mr. Hoffman: I cannot answer the question that way, Mr. Director. I am compelled to answer no to the direct question, but I would like to add to that that the court order was made without notice to us of any kind, and that the Commission, as I understand it, has the power to approve or withhold approval from the plan unless they believe that each interest has been treated equitably under the plan, and we believe that equitable treatment means that you should give consideration to our non-assenting bonds.

Director Sweet: Have you applied to the court for a modification of that order?

Mr. Hoffman: Yes, sir.

Q. (By Mr. Hoffman.) Mr. Scandrett, on page 7
5053 of the present plan relating to the Milwaukee & Northern, it is provided that the bonds remain undisturbed as to lien and interest but to be extended as to principal, certain defaults to be waived, and the mortgages to be otherwise modified.

What are the other modifications of the mortgages to which the plan refers?

A. You are inquiring as to what is covered by the words "and the mortgages to be otherwise modified"?

Q. Yes.

A. It is all on page 11.

Q. I fail to see the detailed modifications.

A. If it is not there, they are not to be otherwise modified.

Q. I see; and the defaults to which the plan refers—may I ask what those defaults are?

A. Any defaults that there are in the mortgage at the present time.

Q. Would the bondholder have a right to ask what those defaults are that it is proposed to waive?

A. A default that occurs to me is in the matter of equipment.

Mr. Swaine: There is another default—the failure to pay these very bonds is a default under the mortgage.

Q. (By Mr. Hoffman.) Other than that, are there
5054 any defaults of which you know that are proposed to be waived?

A. None of which I know.

Q. The plan makes no provision for assessment of any bondholders or stockholders in any way?

A. No.

Q. The plan does not make provision for participation by the stockholders?

A. Yes; it does.

Q. And the participation of the stockholders is projected on the valuation of the properties as leaving the equity in the stock—is that right?

A. Well, we felt that the stockholders should not be wiped out; based on the investment in the property and based on the Commission's valuation, there is a very substantial equity.

Q. There is no earning power at the present time or for the next two years, is there?

A. There is not now.

Q. The Milwaukee & Northern properties have a valuation of about $12,000,000—is that correct?—according to the exhibit introduced in evidence.

A. That is the physical valuation based on a reproduction hypothesis.

Q. And the earnings are substantially twice their interest charges?

5055 A. Well, when you give them credit for the earnings of the system to which they contribute, that statement is correct; they are separately operated properties, on the other hand.

Q. Based on the assumption that Mr. Sparrow made?

A. Well, based on any reasonable hypothesis.

Q. Do you believe it fair, Mr. Scandrett, that stockholders should receive an equity in the property based only on the valuation of the property, whereas bondholders, whose bonds have matured—properties worth twice the amount of their bonds, and whose bonds are earning substantially in excess of their interest requirements,

should be left without compensation to the extent of the payment of their bonds?

A. The stockholders' equity is not based simply upon the Commission's valuation, as I see it; it is based on the investment in the property. I don't think we are asking anything unreasonable of the Milwaukee & Northern bondholders to extend their bonds for another period. On the other hand, I think that four and a half per cent sound investment looks pretty good these days, and I think that is what they have.

Q. They would be much better off if they took the property?

A. No; I don't think so.

5056 Q. Based on the earnings of the property as developed in the past year?

A. That is the earnings on the property as part of the Milwaukee System; the earnings of the Milwaukee & Northern, separately operated, is a very different thing.

Q. Mr. Sparrow's testimony showed that the earnings of the Milwaukee & Northern under independent operation were at least a quarter of a million dollars more than the requirements of the property.

Mr. Swaine: It does not show anything of the sort.

Mr. Hoffman: Under independent operation it shows that.

Mr. Swaine: You mean in the old company?

Mr. Hoffman: Yes.

Mr. Swaine: I think you are wrong about that; the earnings of the property when it was separately operated—that was in 1883; that was before deducting interest on those bonds, was it not, Mr. Sparrow?

Mr. Sparrow: Yes; I think so.

Q. (By Mr. Hoffman.) Do you know, Mr. Scandrett, whether it was or not?

A. I think we had better let Mr. Sparrow's testimony stand.

Mr. Swaine: All testimony is in the record as to
5057 what the earnings were when separately operated; that can be compared with the interest charges.

Mr. Hoffman: I think that is all, Mr. Scandrett.

Director Sweet: Any other questions?

(No response.)

Director Sweet: Call your next witness.

Mr. Swaine: We have now, I believe, Mr. Director, supplied all the documents which the Commission has re-

quested prior to this hearing except two; one was an analysis of the equipment not subject to the equipment trust, which is in process of preparation and will be forwarded to the Commission and, I assume, will be given an exhibit number and made a part of the record.

Director Sweet: The parties will be notified of that number.

Mr. Swaine: Yes. The other is a compilation of statutes of Wisconsin relating to railroads; that was requested in your letter, and we have a pamphlet edition of the Wisconsin laws. I don't think we could make it a part of the record, but it is here for whatever use you care to make of it.

The other documents will be compiled as rapidly as possible and sent in for filing as debtor's exhibits.

Examiner Boyden: You were requested to file an analysis of the investment in road and equipment.

Mr. Sparrow: You asked for an analysis on the
5058 road and equipment in the same form as in the valuation proceeding.

Examiner Boyden: Yes.

Mr. Sparrow: That is not quite complete, but will be complete within a week, I think.

Mr. Swaine: That is the third document asked for.

Examiner Walsh: Then, on that list of equipment that you are going to furnish, there is one little modification in addition to that we have in mind; that is to say, as to your trust equipment and the lines on which they are used, according to the mortgages covering the lines.

Mr. Swaine: Is it practicable to show the lines on which the equipment is used? The equipment is used all over the property.

Mr. Sparrow: All over the property; all over the United States.

Examiner Walsh: That would not be so as to locomotive and passenger equipment.

Mr. Sparrow: Of course, the passenger equipment moves back and forth over the system—a great deal of it.

Mr. Swaine: Except for special trains, like the Hiawatha, the equipment—the locomotives, of course, are electric locomotives, and are necessarily confined to that portion of the line which is all first and refunding and first-lien mileage.

5059 Examiner Walsh: What I have in mind is this article XV of the general mortgage which requires the

maintenance of equipment according to necessity, and there was equipment, in 1889, with this mortgage.

Mr. Sparrow: I take it that that provision applied to any equipment, whether first lien or second lien; all the equipment that is not assigned and used exclusively on the lines west, under the general mortgage, has a lien on it, but that equipment moves back and forth.

Examiner Walsh: If you will show it that way, that will be sufficient.

Mr. Swaine: That has been in the description of properties exhibit—that is included—

Mr. Sparrow (interposing): It is included in appendix A of the exhibit which describes the property subject to the mortgage; it shows the equipment on which the general mortgage lien divides as between equipment subject to equipment trusts and the equipment that is free.

Examiner Walsh: As of June 30, 1935?

Mr. Sparrow: Yes.

Examiner Walsh: I didn't know that.

Mr. Swaine: I think, without being dogmatic about it, the probability is that there is no default in the form of the equipment obligations under the general mortgage because the very fact that we have the services of the equip-
5060 ment today as far as our needs are concerned would indicate that the mortgage probably has more than is required.

Examiner Walsh: A lot of that equipment is subject to the trust and the covenants?

Mr. Swaine: Well, that is a subject of debate; I am at a loss to know what that covers; I think there is ground for litigation there between the general-mortgage bondholders and other bondholders. That is one reason for asking waiver of default if it is there.

Examiner Walsh: Assuming the legal point is against you, for the sake of figuring.

Mr. Swaine: I doubt if there is any vacancy there or not.

Examiner Walsh. Even assuming.

Mr. Swaine: Yes; we think we have the 1889 equipment; I think we probably have, free of equipment obligations, enough equipment to run that line—is that right, Mr. Sparrow?

Mr. Sparrow: I would not want to say either way—whether the modern locomotives in operation on that line are subject to any equipment trust.

Examiner Walsh: Article XV requires that all needed equipment shall be supplied.

Mr. Swaine: That is right; it does not say free of
5061 lien, however.

Mr. Walsh: It says the company will discharge the lien on any of the property.

Mr. Swaine: It does not say it shall not acquire lien by equipment obligations and, of course, as long as the company is performing, it discharges the liens as they mature. I think you have a very debatable question there.

Mr. Sparrow pointed out that all of the old equipment under the Puget Sound mortgage comes in there.

Mr. Sparrow: When the Puget Sound line was added to the Milwaukee in 1912, it had a certain amount of equipment. Now, that equipment, as it came into the system, a great deal of it moved back and forth all over the system; therefore, the lien of the general mortgage attached to that equipment subject to the Puget Sound mortgage; when that passed out, they took first lien.

Mr. Swaine: One of the purposes of this plan is to avoid trying to decide those very questions that you are raising; it does not seem to be of any practical importance to anybody, and therefore we tried to wipe the questions out.

Director Sweet: Have you anything further, Mr. Swaine?

Mr. Swaine: I will say this: We would like, while we are here, to have the benefit of any suggestions that any
5062 of the interveners care to make so that we may have an opportunity of considering them.

Director Sweet: Have you anything, Mr. Burgess?

Mr. Burgess: Well, it is my understanding, Mr. Director, that you planned to hold a further hearing in this matter at some later date; am I correct in that?

Director Sweet: That is correct.

Mr. Burgess: That being so, I think it would be perhaps desirable to state at this time the position of those I represent. Incidentally, I would ask to have the Connecticut Mutual Life Insurance Company, of Hartford, Connecticut, shown as a member of the group as to which the intervening petition was allowed. I presume that I do not need to amend that petition in respect either to the Connecticut mutual or the New England Mutual, of Boston, of which I spoke yesterday.

The group of insurance companies and fiduciary corporations which has intervened believes it desirable before this

hearing closes that the record should show its present attitude toward the plan which has been proposed.

The members of the group as now constituted own the following obligations of the debtor corporation:

5063	General mortgage	$34,129,000
	Convertible adjustment	9,757,600
	Equipment trusts	7,983,000
	50-year fives	6,866,000
	Chicago, Terre Haute & Southeastern first and refunding	1,075,000
	Chicago, Terre Haute & Southeastern inc.	500,000
	Milwaukee & Northern first 4½s	850,000
	Milwaukee & Northern consolidated 4½s	50,000
	Southern Indiana first 4s	300,000
	Chicago, Milwaukee & Gary	200,000
	Total	$61,710,600

The group has studied the plan which has been introduced as exhibit No. 1. We are wholly sympathetic with the effort of the debtor to effect a reorganization of the nature proposed at an early date so as to prevent further destruction of the debtor's credit, to avoid the expense and complications of receivership, foreclosure and sale, and to preserve the efficiency of the operating organization of the company.

In the light of the actualities of the present situation this group views the plan with favor provided it can be adopted and accepted promptly so as to preserve its essential purposes including the various protective provisions which have been incorporated in it.

5064 This conclusion has been reached in consideration, among others, of the following features of this plan:

First, the plan provides for a continuation of income to bondholders in the order of their priority during the readjustment period. This is important as tending to prevent a complete destruction of the debtor's credit with unfavorable effects upon the future of railroad credit generally which would be necessarily incident to a receivership or to prolonged proceedings in bankruptcy.

Second, the plan provides a wholly practical method of providing new money for the enterprise at a reasonable rate of interest.

Third, if the plan may be made effective at an early date

the efficiency and morale of the present operating organization will be preserved.

Fourth, the plan preserves an opportunity for equity owners if the railroad situation is substantially improved within a reasonable period of time.

Fifth, the plan incorporates reasonable compromises essential to its prompt acceptance by the requisite classes while substantially preserving their relative priorities and without wholly eliminating any class of creditors or stockholders.

Sixth, the plan provides a temporary voting-trust arrangement in lieu of the permanent control of the
5065 property which would pass to the bondholders in the event of foreclosure and sale.

Seventh, it constitutes a method of continuing corporate operation at a minimum of expense, thus avoiding the increased cost of receivership, foreclosure and sale which would be especially detrimental to all junior securities as well as to stockholders.

This plan provides a substantial but not a drastic revision of the debtor's capital structure. It constitutes a fair and feasible stand-by arrangement for a period of economic readjustment. With recovery approaching to normal conditions in the territory served, earnings should adequately sustain the revised capitalization.

We believe it to be the interest of security holders that this plan should be adopted and accepted, provided that can be accomplished at an early date.

While the Prudential Insurance Company of America, with headquarters in Newark, New Jersey, is not a member of our group and is not represented by me, I am requested and authorized to state on its behalf that the plan as proposed is acceptable to it under the conditions and for the reasons set forth in the statement just made on behalf of the intervening group.

The Prudential is the present owner of $11,635,600 of obligations of the debtor corporation.

5066 The group which has formally intervened and which I represent is not the same informal group which participated in the discussions of the plan referred to by Mr. Scandrett and Mr. Swaine. That group had no formal organization, but was brought together in response to invitations sent out by the company wholly for the purpose of hearing from the representatives of the company and expressing individual views.

The members of the subcommittee of that informal group who participated in the selection of individuals to act as voting trustees named in the plan as set forth in the letter from Mr. Walker, exhibit 109, were:

Frederick W. Walker, vice president, Northwestern Mutual Life Insurance Company;

G. W. Baker, assistant treasurer, Traveler's Insurance Company;

J. H. Cheston, vice president, Philadelphia Savings Fund Society of Philadelphia;

F. W. Ecker, treasurer, Metropolitan Life Insurance Company;

Alfred H. Meyers, treasurer, New York Life Insurance Company;

Carl C. Sayward, assistant vice president, United States Trust Company of New York;

Carroll M. Shanks, associate general solicitor, Pru-
5067 dential Insurance Company, Newark, New Jersey.

I have made that statement, Mr. Director, because we desire to have the record show those matters at this time.

I have no formal evidence to present; at least, not now.

Commissioner Porter: Mr. Hoffman, have you anything further to present?

Mr. Hoffman: Nothing except what I stated in response to questions from the Commission and the Director and the Examiners.

I believe that we are a separate class of creditors entitled to be paid our bonds at the maturity of them, or that we are entitled to take possession of the road in our own behalf and on behalf of the other bondholders, and I believe the evidence shows that that road operated independently of the Milwaukee can do very well, if the bondholders are made the owners of the road at this time.

Mr. Scandrett: Mr. Commissioner, may I make one further statement, as under oath?

Commissioner Porter: Certainly.

Mr. Scandrett: I want to say I think this committee has exercised a very wise judgment and has been very fortunate in the men that they have persuaded to act as voting trustees in the event that this plan is carried out. I
5068 know three of the members of the voting-trust committee personally, and know all of them by reputation. I would hope that if the plan were carried out and that if

they were voting trustees, and in the event I have anything to do with the management of the property, that all five of them would become members of the board of directors of this company, because I cannot think of any men who would bring to that work more experience and more judgment and more ability than those men, and I intended to say that while I was on the stand, and I would like to have it appear in the record as part of my testimony.

Director Sweet: Are there any other interveners who care to present anything or state their position at this time, which would be very desirable if there is any one interested in the case to state his views even though he does not intend to produce evidence.

Mr. Murphy: Mr. Director, I think my position is clear; I represent the bondholders who are in the identical status with Mr. Hoffman's clients.

Director Sweet: The holders of Milwaukee & Northern bonds?

Mr. Murphy: Yes, sir; the consolidated bonds, as I understand it.

Director Sweet: Are there any other interveners or 5069 any others who appear for interveners?

(No response.)

Director Sweet: As you all realize, this is a most important proceeding, and the interest in it is very widespread and general. It is important, under those circumstances, that a complete and comprehensive record be made, and, for all of those reasons, it seems not desirable to close the hearing at this time; the hearing will, therefore, be adjourned to a date to be fixed by the Commission, and all parties who appear in the proceedings to be notified of the time and place of the next hearing.

The hearing is now adjourned.

(Whereupon, at 2:50 p. m., August 7, 1935, the hearing was adjourned to a date to be hereafter fixed.)

4428 CORRECTED ORDER.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 13th day of August, A. D. 1935.

Finance Docket No. 10882.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company Reorganization.

Upon consideration of the record in the above-entitled proceeding and petition filed on behalf of Thomas E. Noonan for leave to intervene herein;

It is ordered, That the said Thomas E. Noonan be, and he is hereby, permitted to intervene and be treated as a party hereto.

It is further ordered, That a copy of the intervening petition and of this order be served upon each of the parties to this proceeding, and that a copy of this order be served upon all other interested parties.

By the Commission, Division 4.

(Signed) George B. McGinty,
Secretary.

(Seal)

4433 ORDER.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 21st day of November, A. D. 1935.

* * (Caption—10882) * *

Upon consideration of the petition of James D. Colyer, Louis I. Kane and Henry Schenk constituting and acting as the Independent Committee for Protection of Chicago, Milwaukee, St. Paul & Pacific Railroad Company Bondholders, filed November 15, 1935, praying that a public hearing be held by this Commission in the matter of the ratification of the appointment of trustees of the estate of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, debtor; the court of jurisdiction having, by order entered October 17, 1935, appointed Henry A. Scandrett, Walter J. Cummings, and George I. Haight, trustees, subject to ratification by this Commission;

It is ordered, That the said matter be set down for hearing before Director Sweet at the office of the Commission in the City of Washington, D. C., at ten o'clock in the forenoon on December 2, 1935, and that the secretary issue notice thereof and serve the same in the manner provided in the Rules of Practice upon the said appointees, the petitioner, and the debtor.

By the Commission, division 4.

George B. McGinty,
(Seal) *Secretary.*

4439 ORDER.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 20th day of February, A. D. 1936.

• • (Caption—10882) • •

Upon consideration of the record in the above-entitled proceeding and petition filed on behalf Illinois State Trust Company and St. Louis Union Trust Company, Trustees Under Mortgage Dated April 1, 1908, of the Chicago, Milwaukee, and Gary Railway Company;

It is ordered, That the said Illinois State Trust Company and St. Louis Union Trust Company, as Trustees Under Mortgage dated April 1, 1908, of the Chicago, Milwaukee and Gary Railway Company be, and they are hereby, permitted to intervene and be treated as parties hereto.

It is further ordered, That a copy of the intervening petition and of this order be served upon each of the parties to this proceeding; and that a copy of this order be served upon all other interested parties.

By the Commission, Division 4.

(Signed) George B. McGinty,
(Seal) *Secretary.*

3457 ORDER.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 23rd day of June, A. D. 1936.

• • (Caption—10882) • •

It appearing, That the Bureau of Accounts of the Commission has prepared, by the direction of Division 4, a report dated June 13, 1936, on its investigation of the income accounts of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, debtor, for the calendar years 1930 to 1934, inclusive, and that, pursuant to the provisions of Section 77(c)(11) of the act of July 1, 1898, entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States", the Commission may direct said bureau to file such report in the proceeding pending before the Commission for the reorganization of said debtor, Finance Docket No. 10882;

It is ordered, That said report be filed in, and made a part of, the record in said proceeding.

By the Commission, Division 4.

George B. McGinty,
Secretary.

(Seal)

3458 ORDER.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 5th day of August, A. D. 1936.

• • (Caption—10882) • •

It appearing, That the Bureau of Valuation of the Commission has prepared, by direction of Division 4, a report on the elements of value of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor, and the Chicago, Terre Haute and Southeastern Railway Company, and that, pursuant to the provisions of Section 77(c)(11) of the act of July 1, 1898, entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States," as amended, the Commission may direct said bureau to file said report in the proceeding pending before the Commission for the reorganization of said debtor, Finance Docket No. 10882;

It is ordered, That the said report be filed in and made a part of the record in said proceeding.

By the Commission, Division 4.

George B. McGinty,
Secretary.

(Seal)

4451 ORDER.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 25th day of September, A. D. 1936.

* * (Caption—10882) * *

Upon consideration of the record in the above-entitled proceeding and petition filed on behalf of City Bank Farmers Trust Company, as successor trustee under the First Mortgage, dated as of June 10, 1880, and as successor trustee under the Consolidated Mortgage, dated as of February 11, 1884, both made by Milwaukee & Northern Railroad Company;

It is ordered, That the said City Bank Farmers Trust Company, as successor trustee under the First Mortgage, dated as of June 10, 1880, and as successor trustee under the Consolidated Mortgage, dated as of February 11, 1884, both made by Milwaukee & Northern Railroad Company be, and it is hereby, permitted to intervene and be treated as a party hereto.

It is further ordered, That a copy of the intervening petition and of this order be served upon each of the parties to this proceeding; and that a copy of this order be served upon all other interested parties.

By the Commission, Division 4.

(Signed) George B. McGinty,
Secretary.

(Seal)

4462 ORDER.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 10th day of October, A. D. 1936.

• • (Caption—10882) • •

Upon consideration of the record in the above-entitled proceeding and petition filed on behalf of Alfred Wolstenholme and Thos. Wolstenholme Sons and Co. Inc. for leave to intervene herein;

It is ordered, That the said Alfred Wolstenholme and Thos. Wolstenholme Sons and Co. Inc. be, and they are hereby, permitted to intervene and be treated as parties hereto.

It is further ordered, That a copy of the intervening petition and of this order be served upon each of the parties to this proceeding; and that a copy of this order be served upon all other interested parties.

By the Commission, Division 4.

(Signed) George B. McGinty,
(Seal) *Secretary.*

3493 ORDER.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 14th day of November, A. D. 1936.

• • (Caption—10882) • •

The Commission, having under consideration the report prepared by its Bureau of Valuation on the elements of value of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor, and the Chicago, Terre Haute and Southeastern Railway Company, said report having been duly filed in this proceeding by order of Division 4, dated August 5, 1936, pursuant to the provisions of section 77(c)(11) of the Bankruptcy Act, as amended, and

It appearing, That the Bureau of Valuation has prepared revised pages numbered 4, 5, 30, and 31 in said report, restating the principal amounts outstanding December 31, 1935, of the first mortgage bonds and consolidated mortgage bonds of the Milwaukee & Northern Railroad Company, due June 1, 1939;

It is ordered, That the said revised pages be filed in and ade a part of the record in this proceeding, superseding e corresponding pages of the report of said Bureau here- fore filed.

By the Commission, Division 4.

George B. McGinty,
Secretary.

Seal)

471 ORDER.

t a Session of the Interstate Commerce Commission, Di- vision 4, held at its office in Washington, D. C., on the 5th day of January, A. D. 1937.

* * (Caption—10882) * *

Upon consideration of the record in the above-entitled roceeding and petition filed on behalf of Reconstruction 'inance Corporation for leave to intervene herein;

It is ordered, That the said Reconstruction Finance Cor- oration, be, and it is hereby, permitted to intervene and e treated as a party hereto.

It is further ordered, That a copy of the intervening etition and of this order be served upon each of the par- ies to this proceeding; and that a copy of this order be erved upon all other interested parties.

By the Commission, Division 4.

(Signed) George B. McGinty,
Secretary.

Seal)

4476 ORDER.

At a Session of the Interstate Commerce Commission, Di- vision 4, held at its office in Washington, D. C., on the 2nd day of April, A. D. 1937.

* * (Caption—10882) * *

Upon consideration of the record in the above-entitled proceeding and petition filed on behalf of the Railroad Credit Corporation for leave to intervene herein;

It is ordered, That the said The Railroad Credit Corpo- ration be, and it is hereby, permitted to intervene and be treated as a party hereto.

It is further ordered, That a copy of the intervening pe- tition and of this order be served upon each of the parties

to this proceeding; and that a copy of this order be served upon all other interested parties.

By the Commission, Division 4.

(Signed) W. P. Bartel,
Secretary.

(Seal)

3688 INTERSTATE COMMERCE COMMISSION.

(Caption—10882)

NOTICE OF HEARING.

The above entitled proceeding is assigned for further public hearing under the provisions of Section 77 of the Bankruptcy Act, as amended, on June 16, 1937, at 10 a. m., standard time, at the office of the Interstate Commerce Commission, Washington, D. C., before Commissioner Porter.

At the further hearing, further evidence will be received pertaining to the plan of reorganization heretofore filed herein by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor, or pertaining to any other plan which may be presented pursuant to the provisions of the said Section 77. Plans of reorganization may be filed, with the consent of the Commission during the further hearing, by the trustees or by or on behalf of creditors being not less than 10 percentum in amount of any class of creditors, or by or on behalf of stockholders being not less than 10 percentum in amount of any such class, or, with the consent of the Commission by any party in interest.

W. P. Bartel,
Secretary.

(Seal)

Dated at Washington, D. C.,
May 4, 1937.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of volume I of the printed record, which together with volumes II, III, IV and V constitutes the printed record, printed under my supervision and filed on the sixth day of June, 1941, in the following entitled causes:

Cause Nos. 7590, 7610 through 7617.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 15th day of January, A. D. 1942.

Kenneth J. Carrick,

(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*